

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANT AND JOINT APPENDIX

IN THE
United States Court of Appeals
For the
District of Columbia Circuit

FOR THE DISTRICT OF COLUMBIA CIRCUIT

FILED MAY 1 1951

No. 10,977

Joseph W. Stewart
CLERK

MILTON H. deBRUIN, *Appellant*,

v.

LENA M. deBRUIN, by her Ancillary Committee,
Wirt T. Hicks, *Appellee*.

Appeal from the United States District Court for the
District of Columbia.

THOS. H. PATTERSON,
Woodward Bldg.,
Washington, D. C.

JAMES T. BARBOUR, JR.,
JOSEPH M. DAWSON,
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Attorneys for Appellant.

QUESTION PRESENTED.

The question is whether the finding of the lower court that since 1941 the plaintiff had been a mental incompetent without the capacity to desert her husband or to agree to a voluntary separation from him, was supported by a preponderance of the evidence

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Appeal from the United States District Court for the
District of Columbia.

BRIEF FOR APPELLANT.

JURISDICTIONAL STATEMENT.

This is an appeal from a final judgment of the United States District Court for the District of Columbia. The action in the Court below was based on a complaint filed on behalf of a wife, praying for separate maintenance from her husband, together with other relief (J. App. 2-5). The defendant filed a counterclaim seeking an absolute divorce from his wife, based on a claim of two years desertion, or, alternatively, on more than five years separation, without co-habitation (J. App. 6-8). Plaintiff was a resident of Virginia; defendant a resident of the District of Columbia for more than twenty years prior to the bringing of this action.

The District Court had jurisdiction under D. C. Code (1940), 16-403, 16-415, as amended, and Federal Rules of Civil Procedure, 13(a), and 17(c).

The appellate jurisdiction of the Court is based on revised Title 28, Secs. 1291, 1292 of the United States Code.

STATEMENT OF THE CASE.

The parties to this appeal are husband and wife. For purposes of clarity, the appellant who was the defendant in the Court below, will hereinafter be called the "husband", the appellee will be called the "wife".

The wife filed her complaint in the United States District Court for the District of Columbia in her own name by one C. R. Lynch, as her ancillary committee, (J. App. 2-5). The said C. R. Lynch had previously been appointed committee for the wife by the Circuit Court for Caroline County, Virginia, and prior to the filing of this action, he was appointed ancillary committee of the estate of the wife in the District of Columbia. This committee died pendente lite, and one Wirt T. Hicks, a brother of the wife, having qualified in the place of the said C. R. Lynch, was substituted in this cause as ancillary committee for the wife.

The action in the Court below was for the recovery of separate maintenance for the wife, and other relief. The husband, as defendant, by his answer, contested the right of the wife to have separate maintenance, and, by counterclaim prayed for an absolute divorce, based on a claim of desertion on the wife's part more than two years prior to the bringing of the action, or alternatively, more than five years separation of the parties by agreement without cohabitation (J. App. 6-8). On final hearing by the Court, the husband's counterclaim was dismissed and the wife awarded maintenance, counsel fees and costs (J. App. 10-11).

The parties were married in Port Royal, Virginia, in 1926; they lived in the District of Columbia as man and

wife until sometime in March, 1941. No children were ever born to them. The husband has resided in the District of Columbia continuously since 1916 (J. App. 37). The wife was a trained and registered nurse, and actively pursued her profession during the time she lived with her husband. She is twelve or eighteen months older than her husband, who was 44 years old at the time of the separation of the parties (J. App. 203).

In the latter part of January, 1941, the wife became ill, and in connection therewith was extremely nervous and depressed. Dr. Snowden, her attending physician, called as a witness for the wife, described her condition on January 26, 1941, when he saw her at her home as "nervous and seemed to be irrational." He stated that he could not tell who said she was irrational, but that some one in the house, presumably her husband, told him she was irrational, quite depressed, had a bad cold, cough and had spit some blood. Dr. Snowden further testified that at that time she had some chest condition, some rales of the left lung, was going through the menopause and quite depressed; that she was more depressed when he saw her on February 1. He saw her again on February 22, 1941, when she called at his office at which time, she seemed to be brighter, was still quite nervous, her blood pressure had been up a little bit and she had a little tremor of her hands and fingers. When asked to describe her mental condition in 1941, when he saw her, Dr. Snowden testified, "Well, it was a psychosis women going through the change of life so often have. She was depressed, didn't want to talk to me. * * * " (J. App. 23).

Shortly after the wife became ill as above described, the husband conferred with various members of her family in Port Royal, Virginia, including her brother, Wirt T. Hicks,¹ who is now her committee, another brother, Mr. Robert A. Hicks, and perhaps other relatives. As a re-

¹ The middle initial of Mr. Wirt T. Hicks is erroneously written "F" in the transcript of the testimony.

sult of this conference and at the suggestion of Mr. Robert A. Hicks, the wife was taken to Port Royal by the husband in March, 1941, and placed in her mother's home (J. App. 38-39). The wife owned, in her own right, a large furnished house in Port Royal and her mother and at least two brothers lived in the same town. The wife's brother, Mr. Robert A. Hicks, had previously invited her after she became ill to go to his home (in Port Royal) and stay a while (J. App. 35).

The husband made some temporary provisions for nursing his wife, for her support and the attendance of a physician (J. App. 41). He visited her on weekends and at various intervals until sometime in the year 1942 (J. App. 41). The wife turned over her business to her brother, the present committee, who came to Washington and asked for all of her important papers. Disagreements arose concerning monetary matters and the husband felt that an impasse had been reached (J. App. 39, 40). The husband wrote his wife a few times after that and received no reply to those letters (Trans. 130). Subsequently, the wife wrote her husband requesting that various articles belonging to her, including silver and clothing be sent to her (J. App. 42).

During the spring of 1941, the wife was taken to Richmond and placed in a sanatorium without the previous knowledge of the husband (J. App. 43). The wife's expenses at this sanatorium were paid by her brother, the present committee, and the husband reimbursed him to the extent of his ability (Trans. 135). After a short stay at the sanatorium, the wife returned to Port Royal and resided in her own home for a short time and then moved to her mother's home (J. App. 43), where she remained until her mother's death on November 15, 1945 (J. App. 29, 15).

On the occasion when the wife was taken to Port Royal and on subsequent visits of the husband to her, which visits ended in 1942, the wife requested that the husband bring her back to Washington. The husband testified that it had

been his intention when he took his wife to Port Royal, as agreed to between himself and her family, to have her remain there until her health and general condition improved to the extent that she could return to Washington; that he told his wife so on every occasion when she made these requests, including that on which he last saw her; that she apparently understood this; that this was his intention until she asked to have her belongings sent to her in Port Royal and asked for separate maintenance (J. App. 45-66); that his wife in no letter or conversation since he last saw her which was in 1942, had ever suggested to him or indicated in any way that she ever expected to return to her home or wanted to do so (J. App. 45); that he received two or three letters from her the first of which he believed came in the Spring of 1944, although he was not positive about the date, in which she wrote for funds (J. App. 44).

Beginning at least with the date of her mother's death in November, 1945, the wife commenced to go about as she pleased, and made many trips to Washington (J. App. 18), but, on no occasion did she visit her home or call her husband while she was in Washington, so far as the record discloses.

During this period of time, the wife wrote the husband two letters dated December 12, 1945, and March 15, 1946, respectively, requesting the husband to send various articles which she called her personal things, including jewelry, flat silver, sheets, dresses, etc. The first of these letters stated that the wife had asked to have these things sent to her before that date (J. App. 50). Again on March 23, 1948, the wife wrote the husband informing him that someone had offered to buy her Port Royal property at a price of \$14,000 and requested the husband to meet her in Bowling Green, Virginia, to sign the deed (J. App. 51). No suggestion of an intent other than to live apart from the husband was contained in this correspondence. During the same period of time until the latter part of November, 1948, when the wife was placed in a sanatorium in Staunton, Vir-

ginia, she lived in her own home, came and went as she pleased, did her own banking, shopping, and had credit in the stores (J. App. 20, 33-34). Between the time she was taken to Port Royal in 1941, until November, 1948, she conveyed at least three pieces of real estate; one by her own deed as sole owner and two others jointly with members of her family. One of these conveyances by the wife along with other members of her family, was to the United States, for property which became a part of Camp A. P. Hill (J. App. 19, 30). No one questioned any of these conveyances, so far as the record discloses, and the wife received the consideration for the same for her own use.

Following the letters written to the husband by the wife requesting funds, the first of which is believed to have been in the Spring of 1944 (J. App. 44), the wife engaged counsel in Richmond, Virginia, in 1948 (J. App. 52-53); and on July 17 of that year, counsel wrote the husband in an effort to obtain separate maintenance. Later on in the same year, the wife engaged her present Washington counsel.

Toward the end of the year 1948, without notice to the husband, the wife was committed to the DeJarnette Sanatorium at Saunton, Virginia, presumably under an adjudication of mental incapacity, although the record does not clearly disclose the facts or procedure of the commitment. This was followed by the appointment of a committee by the court of Caroline County, Virginia, in the jurisdiction of which the wife resided. The wife remained in this sanatorium only "two or three months" (J. App. 60), when she was paroled according to the testimony of members of her family. Almost immediately thereafter, during the month of April, 1949, the wife was employed at a salary to look after a semi-invalid lady living in Bowling Green and held this position until November, 1949 (J. App. 27). During the period of this service, the present action was commenced.

The husband claimed that he was entitled to a divorce on the grounds of two years desertion or five years separation

under the statute. The wife claimed mental incapacity to desert or voluntarily live apart from the husband during the period of their separation.

STATEMENT OF POINTS.

1. Appellant claims that it was error for the court not to find that more than two years prior to the filing of this action the wife had deserted the husband.

2. Or, alternatively, that it was error for the court not to find that the wife and husband had voluntarily lived apart from each other without cohabitation for more than five years prior to the filing of this action.

3. That it was error for the court to find that the wife had been a mental incompetent since 1941, without the capacity to desert or agree to any voluntary separation from the husband, and that the husband, therefore, was not entitled to a divorce and that the wife was entitled to maintenance.

4. That the finding of the court that since 1941, the wife did not have the capacity to desert or agree to any voluntary separation from the defendant was clearly erroneous in that it was not supported by sufficient evidence to overcome the presumption of the wife's sanity up to the latter part of 1948, when she was adjudged to be incompetent, taken together with the strong affirmative evidence in the record indicative of capacity so to desert or agree to a separation.

5. That it was error to dismiss the husband's counter-claim and to grant separate maintenance to the wife.

STATUTES AND RULES INVOLVED.

D. C. Code (1940) 16-403, 16-415 as amended.

Federal Rules of Civil Procedure, 13(a), 17(c) and 52.

SUMMARY OF ARGUMENT.

(A) There was a full and complete separation of the husband and wife without cohabitation, between the date in 1942 when the husband's visits to his wife in Virginia ceased and the adjudication in November 1948, under which the wife became an inmate of the mental hospital at Staunton, Virginia, or a period of more than five years.

(B) The finding by the court to the effect that throughout the more than five year period referred to, the wife was a mental incompetent incapable of deserting her husband or agreeing to a separation from him was not supported by a preponderance of the evidence, and therefore was erroneous.

(C) In the absence of proof of such mental incapacity on the part of the wife, and irrespective of whether or which of the parties may have deserted the other, the law will presume the separation to have been voluntary, under the applicable statute. *Parks v. Parks*, 73 U. S. App. D. C. 93, 116 F. 2d. 556.

(D) The burden of proof to establish the alleged mental incapacity was upon the wife, and this burden was not sustained. No medical or psychiatric testimony was offered as to the wife's condition during the period referred to. The court did not even have the benefit of an opinion by an expert witness from any branch of the medical profession. Dr. Snowden, the only physician called as a witness, gave testimony as to her condition no later than in February, 1941, before the parties had separated. He did not testify that she was insane (J. App. 22-24). The court did not see the wife; although the testimony indicated that she could and might have been in the District of Columbia when the case was on trial, she was not produced in court (J. App. 59), and no explanation of her absence given.

(E) No witness testified to any acts or series of acts on the wife's part, sufficient to establish her incapacity to

understand or appreciate the duties and obligations of her marital status and that of her husband. No witness expressed an opinion that she was incapable of so understanding.

(F) The claim of the wife's mental incapacity to understand her actions in respect of her marital status is at variance with her conduct during the same period of time, in business matters and other affairs as established by the record.

(G) The marriage of the parties having terminated, in fact, the court should have terminated it as a matter of law by awarding the husband a divorce.

ARGUMENT.

1. Positions Assumed by the Parties.

The theory of the plaintiff's case in the Court below was that while she was ill, her husband took her to Virginia to her relatives and soon thereafter abandoned her and has made no provisions for her support since such abandonment. The defendant husband contends that having taken his wife to Virginia by arrangement with her relatives to be cared for there until her health improved sufficiently for her to return to Washington, she deserted him more than two years prior to the bringing of this action; or, alternatively, that he and his wife had voluntarily lived apart without cohabitation for more than five years prior to the bringing of this action. To these claims on the husband's part, raised in his counterclaim, the plaintiff wife, through her ancillary committee, contended that she was mentally incompetent to desert her husband or agree to a separation from him during any period of this time.

2. Desertion of One Spouse by the Other Is Not of Itself a Defense to an Action Brought by the One So Deserting, for a Divorce Based on Voluntary Separation Without Cohabitation for More Than Five Years.

Even if it had been established by the evidence that the husband actually abandoned or deserted his wife in Virginia, and if it were further shown that the wife did not return to him for a period of more than five years thereafter or actively make an effort so to return, he should have been awarded a divorce under the District of Columbia statute, in the absence of any defense other than that of the husband's desertion. D. C. Code (1940) 16-403; *Parks v. Parks*, 73 U. S. App. D. C. 93, 116 F. 2d. 556.

3. If Wife Resolved During Any Two Year Period While Mentally Competent Not to Return to Husband, He Is Entitled to a Divorce.

If at any period of more than two years duration during the time this husband and wife were living apart, the wife were mentally competent to understand the circumstances under which she was separated from her husband, and resolved not to return to him and entertained this resolution for more than two years without returning, that constituted desertion and the husband would have been entitled to a divorce under his counterclaim. D. C. Code (1940), 16-403. Mental incompetency to defeat the husband's claim for a divorce on either ground assigned by him, would have had to be of such a nature as to render the wife incapable of fairly comprehending what her marital rights and obligations were. Neither partial mental derangement, occasional delusions, hallucinations or foolish or irrational conduct necessarily deprive a spouse of capacity fairly to comprehend her conduct as relating to her marital rights or obligations. *Youmans v. Youmans*, 129 Atl. 122 (N. J. 1925).

It is respectfully submitted that the mental capacity to terminate a marriage by desertion or agreement to live

apart, must be the same as the mental capacity to enter into the marriage relationship. The best accepted test of mental capacity sufficient to contract a valid marriage is whether there is a capacity to understand the nature of the marriage contract and the duties and responsibilities which it creates. It has been held that a person may have sufficient mental capacity to contract a valid marriage though he may not have mental capacity to contract generally. *Roether v. Roether*, (Wis.), 191 N. W. 576, 28 A. L. R. 631 (and annotation thereto); *St. George v. Biddeford*, 76 Me. 593; *Payne v. Burdette*, 84 Mo. 332; *Hagenson v. Hagenson*, 258 Ill. 197, 101 N. E. 606.

4. The Finding of Fact by the District Court is Reviewable and May Be Set Aside.

The finding of the lower Court that since 1941, the wife had been a mental incompetent without capacity to desert or agree to a voluntary separation is reviewable by this Court and may be set aside if erroneous. F.R.C.P., Rule 52. For the purpose of such review of the finding of the lower Court, the whole record should be examined; and, if the finding is found not to be supported by the evidence, it should be set aside. As was said in a late case in the Circuit Court of Appeals for the Fourth Circuit, "In making this investigation, we must adhere to the rule that an appellate court will not disturb the findings of a special master, confirmed by a district judge, upon a disputed question of fact, unless a very plain mistake has been made." * * * Citations omitted. * * * "But as this court has said previously, the findings of a special master, as approved by the judge below, though entitled to weight, are persuasive only and not controlling. The review in this court is a real review and not a perfunctory approval." *Beckley National Bank v. Boone*, 115 F. 2d 513, citing *Warren v. Keep*, 155 U. S. 265, 39 L. Ed. 144; *Crawford v. Neal*, 144 U. S. 585, 36 L. Ed. 552; *Furrer v. Ferris*, 145 U. S. 132, 36 L. Ed. 649, and other cases.

In *Beckley National Bank v. Boone*, *supra*, where the question of the mental capacity of a businessman was involved, in which a large volume of conflicting testimony was offered, upon the issue, including much testimony in many respects similar to that in the instant case, and testimony of doctors on both of the opposing sides, the Circuit Court of Appeals for the Fourth Circuit, without dissent, reversed the finding of a special master on the issue involved, which finding had been approved by the United States District Court.

Bearing on the point of whether the symptoms relied on by the court below established mental incompetency of the wife in the instant case, the following cases are cited, although they relate to mental incompetency in instances other than where the marital relation is involved. *Lee v. State* (Okla. 1925) 234 Pac. 654; *McNett v. Cooper*, 13 Fed. 586; *In re Bennett's Estate*, 51 Atl. 336, 201 Pa. St. 485.

5. The Court's Finding Was Not Supported by a Preponderance of the Evidence

The Court's finding that the wife had been a mental incompetent since 1941, and did not have the capacity to desert or agree to any voluntary separation, was not supported by sufficient substantial evidence to overcome the presumption of sanity, taken together with the other evidence in the case.

In considering the question of the mental condition of the wife beginning with her illness in the early part of 1941, and continuing up to the trial of this case, the Court must recognize the fact that the testimony of only one physician was offered in the case and no attempt was made to qualify him as a psychiatrist. His testimony related to the initial stages of the wife's illness, immediately prior to the time when she was taken to Virginia. The wife's counsel asked Dr. Edgar Snowden, the physician referred to, for his opinion of the wife's mental condition in 1941, to which he answered, "Well, it was a psychosis women going through

the change of life so often have. She was depressed, didn't want to talk to me. * * * But it was just that condition. * * * " (J. App. 23). Dr. Snowden not only was the wife's family physician, but was well acquainted with her, she having nursed some of his patients (J. App. 24).

All of the other evidence as to her mental capacity, except that relating to the adjudication of her mental condition late in 1948, was given by three members of her family and one merchant, with whom she traded at a place near her home in Virginia. The latter witness had continuously allowed her to trade with him up to the time when she went to the sanatorium in Staunton in the latter part of 1948, extended her continuous credit (J. App. 34), and accepted her checks in payment, apparently as he would have done with any other customer (Tr. 93-94).

These four witnesses above referred to testified to various peculiar actions on the wife's part, but *no one* of them testified that she had been insane during this period of time. Only one of them was directly asked to express an opinion as to her sanity, namely, the witness, Wirt T. Hicks, who is now her committee; he was asked in connection with some of the business transactions in which the wife had engaged, if she were sane at that time, to which he answered "She wasn't declared insane." (J. App. 20). It is fair to say that these several witnesses referred to actions on the wife's part which were not altogether normal. Terms used to describe her conduct were "irrational" (J. App. 17), "highly nervous" (J. App. 35), and "very depressed" (J. App. 32). Her sister, Mrs. Mary Lynch, testified that when she saw the wife before she went to Virginia in 1941, she had "hallucinations and delusions", also that she was in a mental state of confusion at that time (J. App. 25). No one of these conditions, nor all taken together, proves insanity, or such mental condition as would have deprived the wife of her ability properly to understand the conditions affecting her marital status, or would have impaired her ability to act for the protection of her rights under such status.

6. Wife's Conduct Indicative of Sanity.

From 1941 until her adjudication of incompetency in the latter part of 1948, the testimony conclusively shows that on the various occasions when the husband visited his wife in Virginia, she urged him to take her back to Washington. This does not suggest mental incapacity. These visits were between March, 1941 and the end of the year 1942 (J. App. 13, 39, 41).

In 1942, she conveyed real estate which she owned in her own name to a person living in Port Royal, who is presumed to have known her condition (J. App. 19). In 1943, she, as cotenant with other members of her family, conveyed a tract of land to the United States to become part of Camp A. P. Hill (J. App. 19). Following her mother's death which occurred in 1945, she along with the other heirs of her mother, conveyed another tract of land (J. App. 20). Apparently, nobody questioned the complete ability of the wife to make these conveyances. Certainly it does not appear to lie in the mouth of those who joined with her in making these conveyances now to say that she was incompetent at that time. She considered selling her home in Port Royal in 1948, and sought to have her husband join in a deed for the release of his inchoate curtesy interest (J. App. 51).

For the property which she sold and conveyed, she received the consideration; she banked and drew checks on her bank account; she continuously did her own banking up until the time of her adjudication of incompetency, and no one seemed to question her right to do so (J. App. 20). She has had continuous credit at the local store, paying in many instances by her own checks without the same being questioned (J. App. 34).

She has been under no restraint, except to the extent that she was in Terra Springs for a few weeks early in 1941, almost immediately after she was taken to Port Royal, and for two or three months following her adjudication in the De Jarnette Sanatorium; and, has been free to come and

go when and as she pleased (J. App. 30, 60), making numerous trips to Washington to visit friends, to the city of Fredericksburg and Richmond; and, so far as is known she may have been in Washington on the very day the case was tried, although the record does not indicate that she attended the court (J. App. 59).

Beginning about 1944, the wife wrote letters to her husband, in general requesting that funds or personal things be sent to her (J. App. 44). The letters which she wrote to her husband on December 12, 1945, and March 15, 1946, indicate complete clarity of mind, and they carry the suggestion that she had previously decided not to come back to Washington (J. App. 50). The letter of December 12, 1945, indicates that she had previously requested to have certain of her property therein referred to, sent to her.

Prior to the retention of her present counsel in this case, she engaged the services of counsel in Richmond to represent her in a claim for maintenance and property rights against her husband (J. App. 52-53). The testimony shows that she paid one lawyer \$100, which probably was in the year 1948 (J. App. 31), and it clearly appears that she engaged her present counsel directly (J. App. 53-54).

She lived the most of the time since 1941, in her own home in Port Royal and continues so to live there, although between the dates of April and November, 1949, she was engaged as a nurse or companion for a semi-invalid in Bowling Green and apparently occupied the home of her employer (J. App. 21-22, 28-29).

7. Wife Not Entitled to Separate Maintenance.

If the defendant husband were entitled to a divorce on his counterclaim as is herein argued, then the same should have been granted, which would have terminated the wife's right to separate maintenance; neither in such an event should she have been allowed permanent alimony.

CONCLUSION.

It is respectfully submitted that the judgment of the lower Court should be reversed.

THOMAS H. PATTERSON,
JAMES T. BARBOUR, JR.,
JOSEPH M. DAWSON,
Attorneys for Appellant.

APPENDIX

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v.

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Wirt T. Hicks, *Appellee*.

Appeal from the United States District Court for the
District of Columbia.

JOINT APPENDIX.

**PLEADINGS, DOCKET ENTRIES AND OTHER
PAPERS.**

227

Filed Jun 3 1949

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2437-'49

LENA M. de BRUIN, By Her Ancillary Committee, C. R.
Lynch, 400 Southern Building, Washington 5, D. C.,
Plaintiff,

v.

MILTON H. de BRUIN, 323 Shepherd Street, N.W., Wash-
ington 11, D. C., *Defendant.*

Complaint for Maintenance.

For her Complaint herein, the Plaintiff Lena M. de Bruin by her Ancillary Committee, C. R. Lynch, states, and said C. R. Lynch being informed and believing same therefore alleges, as follows:

1. That Plaintiff is an adult citizen of the United States and a resident of the District of Columbia and of the State of Virginia and brings this action in her own right as the wife of the Defendant, by her Ancillary Committee C. R. Lynch. That the said C. R. Lynch is her duly appointed Committee in the State of Virginia, and Ancillary Committee in the District of Columbia as evidenced by his Certificate of Appointment attached hereto and prayed to be read as a part hereof.

2. That Defendant, Milton H. de Bruin, is an adult citizen of the United States and a resident of the District of Columbia and is sued herein in his own right as the husband of the Plaintiff.

3. That Plaintiff and Defendant were united in marriage on the 29th day of December, 1926, at Port Royal, Virginia,

and thereafter lived together as husband and wife in the District of Columbia until on or about March, 1941. That no children were born of the marriage.

4. That Plaintiff was employed all during the time the parties lived together as husband and wife. That during part of that time Plaintiff supported the Defendant and paid his tuition at George Washington University where he attended the School of Engineering. That some time during the fall of the year 1927 while Defendant was unemployed, Plaintiff made a contract for the purchase
228 of a home for the parties located at 323 Shepherd Street, N.W., and made a down payment out of her own funds and continued to pay the monthly instalments thereon until the month of March, 1941 when she was taken ill. That Plaintiff purchased the said property in the joint names of the parties with title by the entireties.

5. That from the time of the marriage of the parties to and including March, 1941 Defendant was cruel and abusive of the Plaintiff, that on a number of occasions Plaintiff was brutally beaten by Defendant and had to appear at her place of employment with a blackened eye, or a bruised body or both, which caused her great humiliation. That on or about the month of March, 1941 Plaintiff became ill as a result of Defendant's constant and extreme cruelty, and suffered a nervous breakdown. That while Plaintiff was seriously ill Defendant refused to look after her needs, or to summon a doctor, but put her in his automobile and drove her to her mother's home in Virginia, and left her to the care of her relatives. That from that time and up to the present time Defendant has failed and refused to contribute anything for Plaintiff's maintenance or support or medical care. That Defendant has lived in the home originally purchased by Plaintiff at 323 Shepherd Street, N.W., down to and including the present time, and Plaintiff has received no rents, proceeds or benefits from the jointly owned property of the parties during all of that time.

6. That Defendant has refused to allow Plaintiff to return to the said home of the parties at 323 Shepherd Street, N.W., in the District of Columbia, or to allow her to have her personal belongings which remained in the said home when she was forcibly taken away from it by Defendant.

7. That since the beginning of said illness of Plaintiff, she has not been physically or mentally fit to manage her affairs or to enforce her legal rights. That Plaintiff's family has assisted her financially and otherwise, but hesitated to have her declared of unsound mind and committed to an institution for the mentally ill.

229 8. That on or about December, 1948 it became necessary to commit, and the Plaintiff was committed, to the De Jarnett State Sanitorium at Staunton, Virginia, and that some time thereafter said C. R. Lynch was appointed her Committee.

9. That said Committee now finds that Plaintiff has exhausted her resources and is in financial straits and no longer has any income or funds for her support and maintenance and medical care.

10. That Defendant is employed in the service of the United States Government and receives a substantial salary. That he is well able to support and maintain his wife, the Plaintiff, in comfort, but that he refuses to do so.

11. Petitioner is informed and believes that this Honorable Court may adjust the property rights of the parties to a maintenance action and that in the cause herein this Honorable Court may order Defendant to pay to Plaintiff a reasonable sum in exchange for her equity in the said property at 323 Shepherd Street, N.W., or may order him to convey to her his equity therein.

WHEREFORE, the premises considered, Plaintiff, by her Ancillary Committee prays:

1. That Plaintiff be granted a monthly allowance of a suitable sum, payable by Defendant to her for her support, maintenance and medical care, pendente lite, and permanently.

than five years prior to the institution of this action and more than five years prior to any actual or adjudicated insanity on plaintiff's part, which separation has continued up to the present time and still continues.

239

COUNTERCLAIM

The defendant, Milton H. deBruin, in this his counterclaim, sues the plaintiff, Lena H. deBruin (named in the complaint as Lena M. deBruin) for this, to wit:

One. Jurisdiction is based on D. C. Code (1940), Title 16, Sec. 403; Rule 13 (a), Federal Rules of Civil Procedure.

Two. Defendant is a citizen of the United States, a resident of the District of Columbia, and has been such resident for more than twenty years last past; plaintiff is a citizen of the United States and a resident of the Commonwealth of Virginia.

Three. Defendant and plaintiff are husband and wife, having been married at Port Royal, Virginia, on December 29th, 1926. Following their marriage, defendant and plaintiff lived together as man and wife in the District of Columbia, until, to wit, some time in the year 1941. No children were born of this marriage.

Four. In, to wit, the year 1941, the plaintiff deserted the defendant in to wit, Port Royal, Caroline County, Virginia, which desertion has continued up to the present time.

Five. Or, alternatively, defendant says that plaintiff and defendant lived separate and apart, without co-habitation and by agreement, for more than five years prior to the filing of the complaint in this cause, and for more than five years before any adjudication of insanity on plaintiff's part, or the existence of actual insanity in the plaintiff, which separation continues.

Six. Since the desertion alleged in paragraph four hereof, defendant has resided continuously at premises 323 Shepherd Street, Northwest, Washington, D. C. Plaintiff's permanent residence during the same period of time has been Port Royal, Virginia, although since the filing of the

complaint herein, defendant has been informed that plaintiff is presently living at Bowling Green, Virginia, and for a brief period was a patient at a sanitorium at Staunton, Virginia.

240 WHEREFORE, the premises considered, defendant demands judgment against the plaintiff, Lena H. deBruin, as follows:

1. Judgment in favor of the defendant for a divorce *a vinculo matrimonii*, from the plaintiff Lena H. deBruin.
2. An order appointing a *guardian ad litem* for the plaintiff, Lena H. deBruin, if the court find that she is not legally capable of defending this counterclaim and that C. R. Lynch, the ancillary committee of her estate is not authorized to defend on her behalf.
3. And for all other appropriate relief in the premises.

MILTON H. DEBRUIN.

THOS. H. PATTERSON
Attorney for Defendant
 Woodward Building
 Washington, D. C.

* * * * *

244 Filed Dec 21 1949

Affidavit in Lieu of Answer to Counterclaim.

DISTRICT OF COLUMBIA, SS:

I, Elizabeth M. Cox, being first duly sworn on oath depose and say:

That I am the attorney of record for Lena H. deBruin, Plaintiff, incompetent wife of Milton H. deBruin, and for her Committee and Ancillary Committee, C. R. Lynch, herein.

That said C. R. Lynch is the duly appointed and qualified Committee of the person and estate of said Lena H. deBruin in the Commonwealth of Virginia, and the duly appointed

and qualified Ancillary Committee of the estate of said incompetent in the District of Columbia. That said Lena H. deBruin was declared incompetent and hospitalized in the Commonwealth of Virginia, and has been during the pendency of this suit and is at the present time living in Virginia.

That due to the continued serious heart ailment and hospitalization of said Committee, and to the continued incompetency of said Lena H. deBruin, this attorney has been unable to secure the acknowledgment and signature of either of them to any formal pleading in answer to Defendant's Counterclaim herein for Divorce.

That in order that this cause may be calendared in due course and not dismissed under Rule 13 of the Rules of this Court, this attorney is now filing her Affidavit in Lieu of An Answer to the Counterclaim of Defendant herein.

That this attorney is informed and believes that the allegations of the Complaint for Maintenance filed herein are true, and that said Lena H. deBruin has a complete defense to Defendant's Counterclaim for divorce.

WHEREFORE the Premises Considered, this attorney
245 demands strict proof of all the allegations contained
in said Counterclaim for Divorce and submits Plaintiff's rights and interest to the consideration of this Honorable Court.

ELIZABETH M. COX
Southern Building
Washington 5, D. C.

* * * * *

263

Filed Jan 19 1951

Memorandum.

This is an action by a wife for maintenance and a cross-bill by the defendant for a divorce on the ground of desertion or five year voluntary separation.

I find that the plaintiff is a resident of the State of Virginia and defendant is a resident of the District of

Columbia; the plaintiff and defendant were married in December, 1926; that the defendant has not provided for the support of plaintiff since 1941; that the plaintiff since 1941 has been a mental incompetent and did not have the capacity to desert or agree to any voluntary separation. I conclude, therefore, that the defendant is not entitled to a divorce and the plaintiff is entitled to maintenance. As this memorandum contains the findings of fact and conclusions of law, no formal findings or conclusions will be necessary. Counsel for the plaintiff will prepare the proper judgment dismissing the cross-complaint and providing for maintenance to the plaintiff in the sum of \$125.00 per month and \$350 to the plaintiff as attorney's fees and the costs of this action to be assessed against the defendant.

EDWARD M. CURRAN
Judge

* * * * *

264

Filed Jan 31 1951

Judgment.

The above entitled cause coming on regularly to be heard the 10th day of January, 1951, on the complaint and counter claim and the issues raised, and the Court having heard the evidence and the arguments of counsel, and having heretofore filed a Memorandum containing its findings of fact and conclusions of law, it is hereby this 31 day of January, 1951

ORDERED, ADJUDGED AND DECREED:

1. That the plaintiff have judgment against the defendant dismissing the counter claim for divorce upon the merits.
2. That the defendant pay to Wirt T. Hicks, Ancillary Committee, for maintenance of the plaintiff the sum of One Hundred and Twenty-five Dollars (\$125.00) per month, payable on the first day of each and every month, commencing on the first day of February, 1951.

3. That the plaintiff have and recover of and from the defendant her costs to be assessed against the defendant, and also the sum of Three Hundred and Fifty Dollars (\$350.00) as and for her attorney's fees, and have execution therefor.

EDWARD M. CURRAN
Judge

* * * * *

265

Filed Feb 21 1951

Notice of Appeal.

Notice is hereby given that Milton H. deBruin, defendant above named, hereby appeals to the United States Court of Appeals for the District of Columbia Circuit from all parts of the judgment entered in this action on January 31, 1951, except so much thereof as awarded to the plaintiff a judgment against the defendant for the recovery by the plaintiff from the defendant of the sum of Three Hundred Fifty Dollars (\$350.00) as and for her attorney's fees.

Dated: February 21st, 1951.

THOMAS H. PATTERSON
Woodward Building
Washington, D. C.

BARBOUR & DAWSON

BY JAMES T. BARBOUR JR.
McLachlen Building
Washington 1, D. C.
Attorneys for Defendant

Attorney to be served:

ELIZABETH M. COX
Bowen Building
Washington, D. C.

* * * * *

10 **Wirt F. Hicks** was called as a witness by the plaintiff and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mrs. Cox:

Q. State your name. A. My name is Wirt F. Hicks.

Q. Your relationship to the plaintiff? A. My address is Port Royal, Virginia, and I am the brother of the
11 plaintiff.

Q. Just wait a minute. What is your relationship to the plaintiff? A. Brother of Lena H. deBruin.

Q. What other relationship do you bear in this case. A. Appointed by the court committee, of the plaintiff.

* * * * *

17 Q. Directing your attention down to February, 1941, what was the condition of your sister's health?
A. She was in a very highly state of nervousness.

* * * * *

By Mrs. Cox:

Q. February, 1941, what was the condition of your sister's health? A. She was in very bad shape.

Q. How do you know? A. I was up to see them.

Q. And where was she living? A. She was living up at Shepherd Street.

Q. She was living with her husband? Had she ever separated from her husband that you know of? A. No, ma'am.

Q. Did you visit her often? A. Not very often.

Q. Did they visit you often? A. I would go to see her once in a while when I would come up. Sometimes I
18 would come up with them, with her and him together.

Q. How often did they come down there to the hunting lodge? A. They used to come down sometimes every week-end. That was in fishing season.

Q. Returning to February, 1941, you say she was in a highly nervous state? A. That is right.

Q. Did she have medical care? A. She did.

* * * * *

By Mrs. Cox:

Q. What was your opinion of her condition at that time?

Mr. Patterson: Objection.

The Court: I will let him answer.

The Witness: Very highly nervous until she was brought down to Virginia.

* * * * *

Q. Was she living in the house with her husband, and what were the conditions surrounding her? A. She
19 didn't want to come out of the room, seemed to be in bed with her clothes on.

Q. In bed with her clothes on? A. Yes, sure. Very nervous.

Q. Did she complain of anything? A. She just wouldn't do much talking. She was so nervous. She wouldn't do no talking at all. You couldn't get anything out of her.

Q. Did you ask her why she was in bed with her clothes on? A. She wouldn't give you any answer whatsoever.

Q. When was the next time you saw her after that? A. He brought her down to Port Royal.

Q. Who did? A. Down to my mother's home.

Q. Who did? A. Mr. deBruin, around about the middle of March of 1941, on Saturday evening.

Q. And what happened there? A. He brought her down there and he got me and my sister and all of them there together, and said he would have to leave her down there, that he couldn't bring her back.

Q. Did she want to go back? A. She tried to go back. He had to steal away from her to get back. He stole away to
20 get away from her. Before he did that, I was right present, my sister and Mr. deBruin went up and got a nurse, Mrs. Watts, and brought her down there

and deBruin employed her to stay with her in my mother's home.

* * * * *

Q. Only testify to what you know. After the end of three weeks when the nurse left, what happened? A. The first week he had to steal away from her. She cried. We had an awful time with her. She went up and got in bed with all her clothes on. It was midnight before we got her calmed down.

The next week he came down Saturday afternoon, took her for a ride down there, they both came back that night, and Sunday night he was leaving again and in the presence of my brother and myself, and her in his lap, he said, "You will have to keep her down here. I will make arrangements.

21 She had got a disability clause in her life insurance, that I will pay that policy out so that she can get the \$30 a month, and she will have to live on that, because I have my mother and my job to take care of, and I will take care of the other obligations."

* * * * *

Q. Yes. Did she want to come back? A. She wanted to come back. She carried on, raved and carried on, had to hold her to keep her. She wanted to come back. He told her if she come back up there he would have to put her in St. Elizabeth's, he couldn't have her up here.

* * * * *

26 A. The nurse from Richmond stayed there up until the following June.

Q. What year was that? A. 1941.

Q. After the nurse left? A. After the nurse left, I moved a family by the name of Eddie Lumpkin and his wife as caretakers, to feed her, look after her, keep the
27 place up.

Q. How long did they take care of her? A. They took care of her until 1942, latter part of 1942.

Q. And then who took care of her? A. Then she went over to stay in my mother's house. We let her go over to stay in my mother's house.

Q. Was she able to take care of herself during any of this time? A. She just went around, but she would have those nerve—those spells.

Q. Was she normal? A. Not normal, no.

Q. What did she do that wasn't normal? A. She would go out in the street and bow her head, kick her foot up in the air, go up to the Fork to the stores and cause all the commotion about him, telling everybody everything, what he had done to her, and everybody that didn't know anything about him, what he had done to her.

Q. How long did her mother take care of her? A. My mother died in November, 1945.

* * * * *

28 Q. Did she ever get any better? A. Never did get any better.

* * * * *

Q. Who took care of her affairs during all this period, financial affairs? A. I have been taking care of it

29 up until the committee was appointed.

Q. Until she was committed? A. That is right.

Q. How long did your mother take care of her? A. In the home there from 1942 to 1945, about three years.

* * * * *

Q. Your mother's estate was sold in 1945? A. No. She died in 1945 and we closed the house up, and didn't clear the estate up until later.

Q. After your mother's death, what was her conduct and general attitude? A. The same as it has been at all times, very erratic.

Q. Was her conduct normal? A. No, it was not

30 normal.

Q. Describe some of the things she did that were not normal. A. She would get out and go in the lot and

take a lot of bricks and small pieces of dishes up, a lot my brother had, and build gates, like Golden Gates, and all that kind of child's play, and she would get out there, and one Sunday I went over there and she was sitting on the back of the lot with a sewing machine table with her picture and Boots deBruin's picture sitting facing her, away out on the back lot on the street, and she sitting there with a fire going Sunday morning. She would go out, run a cord, and put the radio out in the lot, play the radio right out in the middle of the lot.

Q. During the time you had the family taking care of her, what did she do that wasn't normal in her house?

A. She would go away and leave all the electric burners all burning, burned up all the electric stove burners, leave lights all on.

Q. What was the arrangement there. Did she have a room of her own? A. Yes, she had the whole house of her own.

Q. Did she use the whole house A. Yes.

31 Q. While the family was taking care of her?

A. Not when the family was taking care of her, staying there. She stayed in one room all the time, never come out of the room. I had to furnish all the food and stuff for her, carry it there to her.

Q. You carried it there to her? A. I carried it.

Q. Would she eat if you didn't carry it to her? A. I carried it to the woman I had cooking for her, looking after her, Mrs. Lumpkin.

Q. How long did she stay in that room and refuse to come out? A. From the time we brought her back until—we brought her back in June of 1941, until sometime the latter part of 1942.

Q. And she refused to come out of the room? A. Wouldn't come out of the room. Never even come downstairs.

* * * * *

35 Q. Did Mrs. deBruin ever make any effort to enforce her legal rights? A. To do what?

Q. To enforce her legal rights? A. Yes, ma'am. She went all over the country and employed lawyers in Richmond, Fredericksburg, Bowling Green and everywhere.

Q. After she employed them, what happened? A. They all would take the case and then turn it down.

Q. Why? A. Because they knew she was irrational. One time she would come in and have one story, want' to do this and that.

Q. She was irrational? A. Irrational, yes, ma'am.

Q. On what do you base your opinion that she wasn't competent to take care of her affairs and take care of herself? A. On her action among the public, and her room, her cleanliness, be in bed, wouldn't take a bath or put clothes on, or no stockings, go around with no stockings, her legs all filthy dirty.

* * * * *

39 Cross-Examination

By Mr. Paterson:

* * * * *

42 Q. Do you know of any trip which your sister made to Washington between June, 1941, and two years ago? A. I know she come up here, went to Mrs. Hamm's, went to different ones.

Q. During this time? A. During this time.

Q. Did she come up in 1942? A. 1942, no.

Q. 1943? A. No.

Q. The last two years is not very elastic, but it is a little elastic. Assuming you meant during the years 1949 and 1950 she came up here? A. That is right.

Q. That is just a little more than two years ago. How early in the year 1949 do you recall any visit she made to Washington? A. How many?

Q. How early in 1949?

The Court: You asked if she went in 1942, and he said no.

43 You asked if she went in 1943. He said no. What years did she come up here?

The Witness: She started coming up here after my mother died, in 1945. She never come up here any before 1945.

By Mr. Patterson:

Q. Then she has been coming and going since 1945, is that right? A. That is right.

Q. Coming to Washington? A. Coming to Washington.

Q. Whenever she wanted to go to Fredericksburg—
A. She comes there now.

Q. Comes to Washington now? A. Yes, sir.

Q. How often does she come to Washington? A. I don't know. She spent the Christmas holidays here with Mrs. Hamm.

Q. Spent the Chirstmas holiday visiting? A. Mrs. Hamm.

The Court: Between 1941 and 1945 did she ever call him on the telephone or write him?

The Witness: She called him, for the telephone operator in Fredericksburg had to get me to drive six miles to get her off of the telephone. She had been on there an hour and a half trying to get him.

* * * * *

44 By Mr. Patterson:

Q. That was in 1943? A. No, 1944.

Q. That was in 1944? A. That is right.

* * * * *

45 Q. Now, in the meantime, you say she has been coming to Washington since 1945? A. That is right.

Q. Frequently? A. Yes, sir.

Q. Go to Fredericksburg shopping? A. Goes where—nobody keeps her tied.

Q. Goes wherever she wants to go? A. That is right.

Q. Now, isn't it a fact, I believe you said, that you said you sold some property for her? A. That is right.

Q. What year was that? A. When did I sell it?

Q. Yes. A. In 1942.

Q. What year—month? A. Somewhere around about April.

Q. Is it not a fact that Mrs. deBruin made a deed to the property, signed the deed? A. That is true.

Q. Signed the deed? A. That is true.

46 Q. Who bought it? A. At our request—

Q. Just a moment. The question is who bought the property? A. Mrs. Blakeley, Nellie Blakeley.

Q. She signed the deed, then you said you sold the property A. I sold the property for—deBruin was the instigator of all of it. He made arrangements with me to sell it, told me to sell it, he would sign the deed. I brought the deed up to him and he signed it.

* * * * *

47 Q. Did the purchaser live in Port Royal? A. She lives there, lives in the house now.

Q. The purchaser who bought this property? A. That is right.

A. A little later on the Government bought some land?

A. That is right.

Q. For Camp A. B. Hill, from your family? A. That is right.

Q. What year was that? A. The purchased it in 1943.

Q. When was the deed given? A. I think sometime probably in September, 1943.

Q. After she had been down there, had been to Richmond and was living down there? A. That is right.

Q. Mrs. deBruin gave a deed to that property, did she not? A. That is right.

Q. And all of you together gave it? A. That is right.

48 Q. Did the doctor certify she was capable of giving a deed at that time? A. Didn't anybody ask for any doctor's certificate.

Q. You permitted her to give that, did you not? You were looking after her affairs? A. We had to. The Government

would have taken it, anyhow. It was compulsory. I had to give them the property.

* * * * *

Q. The middle of November, 1945. Since that time has Mrs. deBruin given any deeds? A. Given any deeds?

Q. Signed any deeds? A. She signed a deed to the real estate that was sold for the home property.

49 Q. Since your mother died in 1945? A. That is right.

Q. Where did she sign that deed? A. Where did she sign it?

Q. Yes. A. Signed it there where she was staying.

Q. Where was she staying, in her own home? A. I don't know whether she was staying in her own home—yes, staying in her own home, that is right.

* * * * *

Q. Had that money in the Port Royal Bank in her own name? A. That is right.

Q. She—did she draw checks on that? The banker there knew her, didn't he? A. That is right.

50 Q. He knew she was sick, but let her draw checks?

A. That is right. She wasn't declared insane.

Q. She was sane? A. She wasn't declared insane.

Q. She was fully capable of signing her own checks?

A. I don't know whether she was or not.

Q. You knew she was signing them? A. Sure, I knew at the time.

Q. Did she make deposits in that account? A. Make deposits?

Q. Yes. A. She didn't work, have anything to make deposits. He didn't give her anything.

* * * * *

51 Q. She has banked at Bowling Green since Nov-
52 ember, 1945, hasn't she? A. Yes, but not but very little. She hasn't had anything to put in there.

* * * * *

53 Q. Now, Mrs. deBruin, where else has she been?

You say she comes to Washington, I understand, whenever she wants to come? A. Sure.

Q. And has since 1945, and everywhere else, practically. Where else has she been visiting, Tappahannock? A. No, goes to Richmond when she want to.

Q. Visits people? A. Sure, she goes and visits people.

Q. Goes shopping around, does shopping in Richmond or Fredericksburg? A. Any place.

Q. Goes places? Right now, doesn't she? A. Yes, sure.

Q. Mrs. deBruin is a trained nurse, isn't she? A. Yes, sir.

Q. How much nursing has she done recently? A. She nursed a little while at Bowling Green, not as a nurse. She was a companion.

Q. This suit was filed, according to my record, on June 3, 1949, alleging that she was incompetent, had been adjudged insane and sent to a sanatoruim. Isn't it

54 a fact that on the very day this suit was filed Mrs. deBruin was engaged as a nurse for a Miss or Mrs. Webb in Bowling Green? A. Not as a nurse.

Q. Wasn't she working for Mrs. Webb? A. She wasn't allowed to give any medicine or anything. All she was to do was stay with her, sleep in the room with her.

Q. She was working, she was engaged? A. She was hired as a companion to walk around with her, go across the street with her, not to give any medicine whatsoever, and it was done through a friend of ours, a sister of her's that gave her the job because she didn't have any money.

Q. Will you tell the Court when the services as companion or nurse, whichever one, for Mrs. Webb or Miss Webb commenced? When did it commence? A. What did it mean?

Q. No. What day did she start working for Mrs. or Miss Webb? A. I don't know. I haven't got the date right then, but I know she was over there quite a little while, three or four months.

Q. You know she was over there three or four months during the year 1949? A. That is right.

55 And you know she was actually employed at the very moment the suit was filed? A. Not as a nurse.

Q. As a companion? A. As somebody to be with this woman.

Q. Was she paid? A. Sure, she was paid.

Q. She was paid during all this time? A. That is right. She had to live. She didn't have nothing to live on.

Q. Reference has been made to her going to a private sanatorium, that is the deJarnette Sanatorium in Staunton? A. That is right.

Q. How long did she actually stay there? A. Went there sometime before Christmas, and she was up there two or three months.

Q. Two or three months? A. Yes. She was sent up to Dr. deJarnette's private institution.

* * * * *

60 **Dr. Edgar Snowden** was called as a witness by the plaintiff and, having been first duly sworn, was examined and testified as follows:

Direct examination

By Mrs. Cox:

Q. Dr. Snowden, state your full name. A. Edgar Snowden.

Q. You are a licensed, practicing physician here in the District of Columbia? A. I am.

Q. Do you know Mrs. Lena deBruin? A. Yes.

Q. How long have you known her? A. I could not say right offhand. I knew her. She was a nurse down at Emergency Hospital back there quite a number of years. I suppose 25 years, maybe something like that.

Q. And when was the last time you saw her? A. I couldn't exactly say that, sometime last summer she was in Washington and dropped in to say how do you do to me, not a professional thing.

Q. Did you see her in 1941, professionally? A. Yes, I did.

61 When was that? A. May I consult my notes, my records? It is ten years ago and I forget the particulars. I saw her at her home January 26, 1941.

Q. What was her condition? A. She was nervous and seemed to be irrational. I could not tell who said that, but someone in that house, presumably her husband, told me she was irrational, quite depressed, had a bad cold, cough, and told me she had spit some blood. She had some chest condition, some rales of the lung, of the left lung, I think I marked it here—yes. Rales of the left lung, going through the menopause, change of life, and quite depressed.

Q. Depressed? A. Depressed, very depressed. I saw her again on February 1. That was January 26. February 1, she seemed more depressed, was very, very depressed, would not talk.

I got an X-ray of her chest made because of this condition. That was all right. There wasn't anything wrong. I saw her then, again, February 22. She came to my office that day, and at that time she seemed to be brighter, and she was still quite nervous, and her blood pressure had been up a little bit. She had a little tremor of her hands or fingers. I just gave her some mild sedation, and I didn't see her again until she dropped in. That was 1941.

62 She came to my office sometime last summer.

Q. How would you describe her mental condition in 1941 when you saw her? A. Well, it was a psychosis women going through the change of life so often have. She was depressed, didn't want to talk to me. She didn't call me. Someone else had called me from the house to see her. I do not know who did. But it was just that condition. She had a bad cold at that time when I saw her, too, as I told you.

Q. Was she a woman of good character? A. Excellent, to my knowledge.

Q. Did she ever do any nursing for you? A. Yes.

* * * * *

Mr. Patterson: No cross-examination, Dr. Snowden.

* * * * *

67 **Mary Hicks Lynch**, called as a witness for and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination

By Mrs. Cox:

Q. State your full name. A. Mary Hicks Lynch, Mrs. Charles.

Q. What is your relationship to Mrs. deBruin? A. I am her sister.

Q. What is your profession? A. I was graduated in nursing from the Walter Reed Hospital here.

Q. Were you closely associated with your sister, Mrs. deBruin? A. Mrs. deBruin was a nurse at Emergency during the time I was a nurse at Walter Reed.

Q. Do you know Mr. deBruin? A. Yes, I know him.

* * * * *

68 Q. Directing your attention to February, 1941, Mr. deBruin alleges Mrs. deBruin deserted him, or lived separate and apart by agreement. Do you know anything about that? A. Well, I know that she was in a terrible state of depression, and my sister and her husband, and my husband, Mr. Lynch, came up here and went to the deBruin house on Shepherd Street, and Mrs. deBruin was not there. Her husband had taken her over to Dr. Snowden's office. That was one of the visits Dr. Snowden related this morning. We did not contact her. His mother was at the house and she said they had gone to the doctor. Then we went over to Dr. Snowden's office. We saw her go in and come out of Dr. Snowden's office, dressed all in black, very morbid looking, very depressed. We waited in our car until she

left Dr. Snowden's office. My sister was a nurse in a hospital in Richmond, St. Luke's. The two of us and our husbands went in, contacted and had quite a conversation with Dr. Snowden, and he said just what he related here in substance.

Q. From time to time did you see her at Shepherd
69 Street? A. We didn't go back.

Q. When was the last time you saw her on Shepherd Street? A. I guess that was—I did see her on a visit, I had come up here to visit previous to that, but that particular visit I saw her but didn't let her see me, because I saw she was in a mental state of confusion, and so forth. We thought it would upset her, and we didn't want her to know we had contacted Dr. Snowden. We wanted to get the Doctor's suggestions, what he thought about her condition, what should be done, and so forth.

Q. When was the last time you saw her in her home? A. Shepherd Street?

Q. Yes. A. Somewhere in February.

Q. February, 1941? A. Yes.

Q. What was the condition of the home then? A. The house was a very morbid house; they kept lots of dogs around in the house, and a very depressed state of affairs.

Q. What was her condition? A. She was in a terrible nervous condition.

Q. Was she in bed? A. Yes. She was actually in her room with the doors closed and the curtains all drawn.

70 She had hallucinations and delusions, had ideas cops were on the outside trying to get her.

* * * * *

Q. I want you to say what you saw and what you know. Were you present when Mr. deBruin brought her down?

A. He brought her to my brother's house and stopped there and had dinner. They live about five miles from Port Royal. She tore all the fur off, the whole lining off her coat. She had pulled all the fur off her coat, and tore my

sister-in-law's tablecloth she was in such a terrible state. Later that afternoon we got her, brought her down to my mother. We discussed it, and he and I went about a
 71 mile up the road and got a lady who said she would be glad to come down. We couldn't leave her with my mother.

Q. When you say "we", you and— A. Mr. deBruin and I. We discussed it. In other words, he knew I was a nurse and realized her condition.

Q. He employed a nurse? A. She was not a graduate nurse, a lady who had been doing some practical nursing.

Mr. deBruin employed her, himself. He told her he would be responsible for the bill. I didn't see Mr. deBruin pay the bill. I know my mother paid two weeks.

Q. How long was she there? A. Mrs. Watts cared for her three weeks. I was there not only Sunday, but I went back and know they were really having an awful time with her. In fact they had to get the local doctor come to give her a hypodermic to quiet her. Mr. deBruin knows we did, Dr. Harris.

Q. Did she want to stay? A. She didn't want him to go back without her. He had to leave without her knowing, sneak off. He got off without her present. She was determined she was going back with him.

* * * * *

72 Q. Were you present at any time he was with her after that? A. Yes, I was there when she was living in her own house when she was, I would say, in a catatonic state, sitting just like a statue, wouldn't eat, wouldn't do anything. In fact, she wouldn't talk. Mr. deBruin came one Sunday afternoon while I was there.

* * * * *

The Court:

* * * * *

76 Q. There has been some reference made to Mrs. deBruin being employed. A. I tell you what hap-

pened. We brought her back from Staunton, put her in a boarding home at Richmond. Her money used to pay her bills. She absorbed all the money. It was up to the family to take her. Another sister took her, kept her two weeks, it was my turn, and so I took her, and Mrs. deBruin was not rational after she came back. She is not yet. She would walk around in my front yard, which was very humiliating, with garlands of leaves all in her hair, like some Greek goddess. She still goes around, comes to my little community over there to get her hair washed occasionally. She used to. She doesn't now. She is in debt to the hairdresser right now. And my neighbor, Mrs. Webb, was the dentist's wife,

77 who lived next door to me, and she said, "Mary, I think we ought to try to help Lena, try to get her back on her feet, she needs something to do." She said, "My husband has a half-sister, an invalid, requires no medication. If we can get Charlie, your husband, who is committee, to consent for her to go out there, just sit with her, somebody to be in the room so she doesn't topple over. She is a creeping paralysis case. Just somebody to sit there with her, try to help comfort her, may be it will relieve Lena's mind. Maybe if she feels like she is doing something, it will help her."

We put her on the case. She went there in April, stayed until November. The day she left the case she took a fit in front of the taxi stand. Every taxi driver right there saw her throw herself down on the street, and they called and said, "Mrs. Lynch, something has happened."

Mr. Patterson; Just a moment. Who was saying this?

The Witness: I was called to come up there afterwards.

By Mrs. Cox:

Q. Tell what you saw after you got up there. A. She had everything she had carried from Port Royal, pots, pans, her clothes. She had gone to an antique shop and got a lot of nice things and a lot of junk, had all these in the middle of the floor packed up, saying she was leaving.

I tell you what she got mad over, why she left, was because the lady of the house, Mrs. Webb, Sr., had gone to the post office and signed for mail for her, and she said
 78 nobody had a right to sign her name except my husband, who was committee, and she got mad with Mrs. Webb because Mrs. Webb signed for her at the post office for an insured package.

I pleaded with her to come and stay with me, because she had no fuel, and no food, and the lights were turned off in her house. She wouldn't do it, wouldn't listen.

* * * * *

Q. Did you go to her house and see it? A. I certainly did. I would like for you to see it today. It is just a bedlam, pots and pans, old rags. It looks like typical of a person who is just shut off to themselves, and as my brother stated this morning, she is unsanitary, she is unclean. It is embarrassing to the family the way she goes around in the community.

I would like to say also she had a complex about lawyers. She has been to every lawyer in my little community, Bowling Green, been to lawyers in Tappahannock, one in Richmond.

* * * * *

79 Cross-Examination

By Mr. Patterson:

Q. Mrs. Lynch, the period during which your sister worked for—is it Mrs. Webb or Miss Webb? A. Miss Webb. Mrs. Webb was my neighbor, both of the same name. She was the one who really employed her, but Miss Webb—

* * * * *

Q. The period of time during which she worked for Miss Webb was from sometime in April? A. April.

* * * * *

80 Q. April 1948. A. Because my husband—wait a minute. Let me get this straight. My husband had a heart attack in 1949 and she was working there. No, 1949. You are right. She was there from April.

Q. April 1949 until sometime in November, 1949? A. That is right. You are right.

* * * * *

82 Q. You made a deed jointly with Mrs. deBruin, you made several deeds with her, didn't you? A. Deeds?

Q. Yes. Did you convey some property to the Government for Camp Hill? A. Yes, the Seth Hicks estate.

Q. What year was that? A. I don't know when the Army took it. Around 1942, 1943, sometime in there. I really don't know.

83 Q. Sometime after he went down there? A. I had a job with the Government at that time. They took my job, too, at the same time, so I think it was around—

Q. Previous to that she had made a deed to some other property. What property was that? A. The Gibbs property was sold.

Q. What year was that? A. Let us see, Mr. Patterson. I really don't know the actual date. I want to tell you the truth.

Q. After she had come back down to Port Royal? A. Yes, sir.

Q. Later on, after your mother died—she died in November, 1945? A. Died the 15th of November, 1945.

Q. Her estate was settled, was it not? A. Yes, sir.

Q. Some other property was conveyed, was it not? A. Yes. She got her share of the A. B. Hill.

Q. The point is, between 1941 when she went down there, and, say, up to around 1946, she made three deeds, didn't she? A. She made the—I don't think it was three. We deeded one piece, the A. B. Hill, and the old home place was sold.

Q. Old home place? A. Yes.

84 Q. Was sold when, 1946? Your mother died in 1945. A. Somewhere around in there. I really don't know what dates. I want to tell you frankly.

Q. Nobody raised the point she didn't have mentality enough to sign deeds, did they? A. Well, you know the Government. They wanted the land. They took it. Would they have taken it without her?

Q. Did not at least two persons, two individuals, buy property from her? A. Two individuals?

Q. Yes. A. Bought property?

Q. Is there a Mr. Hamm down there? A. Oh, no, Mrs. Hamm, a lady. She knows Mr. Hamm.

Q. Did Mr. Blakeley buy some property from her? A. Mrs. Blakeley?

Q. Mr. Blakeley. A. That was the Gibbs property?

Q. Yes. A. That was the Gibbs property, the little house they sold the boxwood off.

Q. She owned the property or had an interest? A. That was her property before she married Mr. deBruin.

Q. She sold that to Mrs. Blakeley when? A. Let me see, now. The Blakeley property was sold—must
85 have been sold after Mrs. deBruin went to Terra Springs.

Q. After she had gone back to Port Royal? A. Yes, because I know the money was used to go to Terra Springs.

Q. Mrs. Blakeley lived right in Port Royal? A. She didn't at that time. She moved there from Fredericksburg.

Q. She did not object to that deed? A. I guess not. She is living at the place.

Q. Isn't it a fact that beginning with 1945 your sister has come and gone wherever she pleased? A. Yes, sir.

Q. Except for the brief period she was in a sanitarium? A. She is probably on the bus riding somewhere right now.

Q. She goes visiting? A. Yes, and she is visiting in the past. She visits relatives and friends she knew 25 years ago.

Q. She does her own marketing? A. No, she doesn't eat. She has gotten very mercenary and living on her friends.

Q. She comes to Washington very frequently? A. Very. Mrs. Hamm would testify to that, she goes up there right frequently.

86 Q. Bowling Green? A. Yes, sir.

Q. Goes to stores? A. Yes.

* * * * *

87 Q. How much did Miss Webb pay her while she was— A. I think Mrs. Webb paid her about—let me see. It was either \$15 or \$18 a week, and allowed her about \$2 or \$2.50 or more.

Q. That is the period from April— A. To November, and she allowed her —

Q. Who else has she worked for? A. She hasn't worked for a soul. She can't go to work because she can't get social security. They won't allow social security to a mental patient under a guardian.

Q. That is because she is what you call under a guardian at the present time? A. She is still on parole.

Q. She lives in her house? A. Yes, Mr. Patterson, if you call it living there, but, as I said, she is on the bus most of the time.

Q. She doesn't loan any money to anybody? A. I know one lawyer in Richmond got, I think, \$100 out of her.

Q. Making loans? A. No, not making loans, but she went down trying to get her rights back, gave this
88 lawyer \$100. Of course he didn't know at the time she was a mental patient.

* * * * *

88 **William Scott Johnson**, called as a witness for and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mrs. Cox:

Q. State your full name, please. A. William Scott Johnson.

Q. Do you know Mrs. deBruin? A. Yes, ma'am.

Q. What is your occupation? A. I am a merchant.

Q. Where? A. Port Royal.

Q. How long have you known Mr. deBruin? A. Twelve years.

Q. Under what circumstances? A. I knew Mr. and Mrs. deBruin when I first went down there. For several years they used to come down on week-ends, stop by the store and get things, and then along about 1941 I saw Mrs.
89 deBruin off and on come in the store, not too often, by herself. I didn't know the circumstances.

Q. What was her conduct then? A. Well, she would come up, and mostly she would come over to the bus terminal where we meet the bus, which is across the street, and she would come up there lots of times. Just sometimes she would meet the bus, and again she would come up there, just look like she was just wandering around.

Q. Was there anything about her conduct you noticed that was not normal? A. Sometimes she would come in, seem to be very depressed. Then again I have known her to come in, I remember one time particularly she come in singing, and another time I saw her in there taking this paper and tearing it up, just throwing it around on the floor.

* * * * *

Q. Have you noticed anything about her conduct
90 that wasn't normal other places in town? A. My place of business is about a mile from the village where she lives, and I was going down in the village one day, and I saw this person on the side of the road, and when I got there it was her in this mud hole. There was a small mud hole, and she would walk around that mud hole. I

slowed up, and I watched her, and she would walk around this mud hole, and then she would jump across it, and she would walk around it again. She was throwing her hands all about, and she would jump across it again. I slowed up, and then I turned around, looking back through the back glass after I passed her. She was still doing that same thing.

Q. Did she see you or notice you? A. She didn't pay any attention to me at all.

Q. Does she come in your store very often? Does she buy things there? A. She does more often now than she did before she was taken away. She didn't come in as often before she was taken away as she does now. I think she wants to go somewhere, have somewhere to go. She comes up very often now. She comes up there after groceries.

Q. Does she do anything that isn't normal? A. Yes, indeed.

Q. What? A. She comes in now, sometimes, singing. She doesn't talk about her affairs, because I asked her
 91 about twelve months ago—she was telling her affairs to one of my clerks. I don't know what she was telling him, but I told her, I said, "Mrs. deBruin, we hear that every time you come up here. We know all about it. You have told us your troubles lots of times," and, I says, "I don't care for you to keep telling them in here," and she doesn't do it now.

Q. Does she buy groceries from you? A. She buys groceries from me. The family has made arrangements with me to let her have her immediate needs, and they are taking care of the bill.

* * * * *

Cross-Examination

By Mr. Patterson:

Q. In what year was this instance about jumping over the mud holes? A. I would say about—it was after Mrs.

Hicks died. I think Mrs. Hicks died in 1945. I would say it was 1946. I won't be positive.

* * * * *

92 Q. Didn't you extend credit to her before they told you to? A. Yes, sir.

Q. Been extending credit to her ever since you have been in business, haven't you? A. Yes, sir.

* * * * *

93 Q. From the time of her mother's death, that is, in November, on November 15, 1945, I believe Mrs. deBruin herself traded at your store and had an open account there, did she not? A. Yes, sir.

Q. And after the appointment of Mr. Lynch to look after her affairs, which was early in 1948, the family authorized the continuance, and Mr. Lynch paid the bill, I believe, is that right? A. The family authorized me—oh, it hasn't been over two or three months ago.

Q. That is the first authorization you had? A. Yes, sir.

* * * * *

98 **Robert A. Hicks**, called as a witness for and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mrs. Cox:

Q. Give your full name. A. Robert A. Hicks, residence, Port Royal.

Q. What relation are you to Mrs. deBruin? A. Brother.

Q. Do you know Mr. deBruin? A. Yes, sir.

99 Q. On Mr. deBruin's answer he says that Mrs. deBruin deserted him and/or agreed to separate. Do you know anything about that? A. In February, 1941, I received a telephone call from Mrs. deBruin to please come to Washington at once to Shepherd Street. I immediately got in my car and drove to Washington and went out to Shepherd Street and parked and went to the

2. That Defendant be ordered to deliver to Plaintiff possession of her personal belongings now in his custody.

3. That Plaintiff be granted a reasonable sum of money payable to her by Defendant to reimburse her for her equity in the property at 323 Shepherd Street, N.W., in the District of Columbia, or in the alternative, that Defendant be ordered to convey to Plaintiff his equity in said property.

4. That she be granted such other and further relief as to this Honorable Court may appear reasonable and just.

LENA de BRUIN, *Plaintiff*
by her Ancillary Committee
C. R. LYNCH

230 ELIZABETH M. COX
Attorney for Petitioner
400 Southern Building
Washington 5, D. C.

COMMONWEALTH OF VIRGINIA, ss:

C. R. Lynch being first duly sworn on oath deposes and says, that he is Ancillary Committee for the Plaintiff in the above entitled cause, and has read the foregoing Complaint by him subscribed as said Ancillary Committee, and knows the contents thereof; that the statements therein made of his own knowledge are true and those made on information and belief he believes to be true.

C. R. LYNCH

Subscribed and sworn to before me this 28th day of May, 1949.

(Seal) H. P. DARRINGTON
Notary Public
Commonwealth of Virginia

My Commission Expires Sept. 8, 1951

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232

Filed Jun 23 1949

Excerpts from Answer and Counterclaim.

* * * * *

236 Defendant denies that since the beginning of plaintiff's illness in 1941, she has been physically and mentally unfit to manage her affairs or to enforce her legal rights; but, defendant says, on the contrary, that during this period of time plaintiff has made contracts in her own name, has conveyed property, has employed various lawyers in her own name to represent her and that no committee was ever appointed for her before January 3, 1949. During the last two or three years, and particularly during the year 1948, plaintiff employed counsel to represent her in making demands upon the defendant for adjustment of property rights and maintenance. At least two separate attorneys were engaged by the plaintiff, individually, to represent her in these matters during the year 1948, and she was so represented in presenting plaintiff's said demands, without any claim being made, by either of the two that plaintiff was not then capable of suing.

* * * * *

238

SECOND DEFENSE

The defendant denies the allegations of cruel, abusive and brutal conduct made against him in the complaint; * * *

* * * * *

THIRD DEFENSE

Defendant says that more than two years prior to the institution of this action, more than than two years prior to any adjudication of insanity on plaintiff's part, and more than two years prior to any insanity as a fact on plaintiff's part, if such insanity ever existed, plaintiff deserted the defendant and continued that desertion. Or, alternatively, defendant says that plaintiff and defendant lived separate and apart by agreement and without co-habitation for more

house, knocked on the door, and Mrs. deBruin—Mr. deBruin's mother came to the door and says, "Lena is upstairs." So I went on upstairs and she was in her room with the curtains down, with a black dress on, and said she was scared to death, that the cops were running all around the house, that Mr. deBruin said they were after her. She didn't know why they were after her, but they were after her, and she didn't know what to do.

I said, "Lena, come on, go down with me and stay a while. You are highly nervous. Stay until you straighten up a little bit."

She said, "No," she wouldn't go now, she would come down later, but she would give me a lock box, wanted me to take down, had her jewelry, some silver in it, would I take it down. I told her yes, I would. She kept the key, didn't have it locked. I took the box and went on home.

I immediately got in touch with my sisters and told them Lena was in a terrible state of mind, and something should be done, so they made a trip up here to visit and they came up here and didn't bring her back.

Q. When was the next time you saw her? A. The next time I saw her was when he brought her to Port
100 Royal sometime in the latter part of that month, March, he brought her. It was the last part of February, I think, when I was up here.

The Court: Who brought her?

The Witness: Mr. deBruin brought her there and brought her to my mother's. I wasn't there until the time for him to go, and she was in his lap in the kitchen, and he talked to everybody, said he was working, his mother was up there, and that he couldn't work and look after Lena, and something had to be done, so he left her down there.

By Mrs. Cox:

Q. Did she want to stay? A. No, she didn't. She was clinging to him, to go back with him.

Q. Did you hear her ask him to take her back to Washington? A. Yes, ma'am, I did. So he was back down there

the following week-end. She begged him to please take her back, and he slipped off from her again.

* * * * *

103 Q. Does Mrs. deBruin have any income now? A.

104 Nothing but the rent from her little office that she has.

Q. How much does she get for that? A. I am told \$15.

* * * * *

108 **Richard Caldwell**, called as a witness for and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Patterson:

Q. Please state your full name. A. Richard Caldwell.

Q. Where do you reside? A. 2,000 Connecticut Avenue.

* * * * *

Q. Do you know Mr. and Mrs. Milton H. deBruin? A. Yes, sir.

Q. How long have you known them? A. Oh, I
109 would say from about 1937, 1938 somewhere in there.
1937 or 1938.

Q. Have you seen Mr. deBruin with any degree of frequency since 1941? A. Very much so; yes, sir.

Q. Have you visited his house with any degree of regularity since that time? A. An average of once a week, I would say.

The Court: Where did you visit him?

The Witness: At his home.

The Court: Where?

The Witness: 323 Shepherd Street.

The Court: Once a week?

The Witness: Yes, sir.

By Mr. Patterson:

Q. Have you seen Mrs. deBruin at that house on any of your visits there since sometime during the year 1941? A. No, sir.

* * * * *

111 Q. To your knowledge does Mrs. deBruin live in that house? A. Her?

Q. Mrs. deBruin, yes. A. No, sir.

Q. Has she lived there, to your knowledge, since 1941? A. No, sir.

* * * * *

112 **Milton H. deBruin**, the defendant, was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Patterson:

Q. Your name is Milton H. deBruin? A. Yes, sir.

Q. You are the husband of Mrs. deBruin who is the plaintiff in this case? A. Yes, sir.

Q. When did you cease to live together as man and wife? A. Mrs. deBruin and I have not lived together as man and wife since 1941.

Q. Your wife, I believe, was a trained nurse? A. Yes, sir.

Q. I forgot to ask you, you have lived in the District of Columbia for how long? A. Since 1916.

Q. And Mrs. deBruin lived with you as your wife up until your separation which has been testified to here? A. Yes, sir.

* * * * *

114 Q. Then what happened? A. The 19th of January, 1941, Mrs. deBruin and I made a trip to Port Royal. That was my birthday and, accidentally, it was Inauguration Day, and I drove down by Colonial Beach—

this, perhaps, may be irrelevant, Your Honor. If it is, interrupt me. And I went over to Port Royal, picked up some oysters, spent a very pleasant week-end, not a week-end, but the day at Port Royal, and returned to Washington the next morning. Now, I am not positive about the day of the week, I can't be that positive, but Mrs. deBruin returned to the Phillips home in Chevy Chase. Mr. Phillips sent his car for her, as was customary. He would send the car over, pick her up, take her out there.

And a few evenings after that she called me over the phone and said she wanted me to come out to Chevy Chase and get her, which I did, drove out at probably 8 o'clock at night.

The Court: This is still in January, 1941?

115 The Witness: Yes, sir.

The Court: Go ahead.

The Witness: She came into Washington with me, and she had packed up all her belongings she had out in Chevy Chase, several suitcases, and so forth, and she said, "I am not going to work any more. I am through with this job. I want to go back to town." I said, "All right."

She chatted all the way into Washington, and then a few days after that I noticed that Mrs. deBruin was acting peculiarly, she was nervous. I sat and talked with her, and could not persuade her from some of the ideas that were running through her mind, but, at any rate, I called Mr. Hicks on the phone, Mr. W. T. Hicks, sitting over here. I called him on the phone and told him I wanted to come down and have a talk with him concerning Mrs. deBruin's condition, because I felt she was going to require nursing.

* * * * *

116 By Mr. Patterson:

Q. Go right ahead from there. Go on. Tell it in your own way. A. I went to Port Royal, conferred with Mr. Hicks.

Q. Which Hicks? A. Mr. Wirt Hicks. Also, Mr. Robert Hicks and a gentleman here in town by the name of Paul

went along with me for the ride, and I believe that—well, I am sure that another brother-in-law was present, a Mr. Elmore, when the three of us sat down to discuss ways and means of handling the situation, which was impossible for me to handle here in Washington. My mother was a semi-invalid.

Q. Was she dependent on you for support? A. Yes, sir.

Q. Did she live with you? A. Yes, sir.

Q. Go ahead. A. I explained it would be absolutely impossible for me in my financial straits at that time to pay for a fulltime nurse, and as I recall it, Mr. Robert Hicks suggested that she be brought to Port Royal. That
117 was after I had called Dr. Snowden to our home.

Dr. Snowden testified that he didn't recall who called him to 323 Shepherd Street, but I did, and I took Mrs. deBruin to Dr. Snowden subsequent to that.

* * * * *

118 Q. Something was said here, has been testified to here that she begged you to take her back with you when you came, is that correct? A. Yes, she used to raise the question about coming back, and she was always told that when she was well she could come back.

Q. When was the last time you visited her? A. In Port Royal? I haven't visited Mrs. deBruin in Port Royal, that is, to visit her, since the fall of 1941, possibly the spring of 1942. I have made subsequent trips there to confer with Mr. Hicks, which trips were made there—

* * * * *

The Court: Why did you stop going down to see her?

The Witness: Because I felt that an impasse was
119 reached for two reasons. Her affairs were in a terribly tangled condition. She had sent her brother, Mr. Wirt Hicks, up to Washington, and asked for all of her important papers. She had turned her business over to him in all respects. I told him I would cooperate in so far as I could, but there arose disagreements concerning monetary matters.

* * * * *

121 The Court: On the occasion of that visit, did you discuss with her the possibility of a separation between you two?

The Witness: No.

The Court: Did you ever discuss a separation with her?

The Witness: No, not on my part.

The Court: Did she ever tell you she wanted a separation, or that she wanted to leave you, or she wanted you to leave her?

The Witness: Mrs. deBruin made this remark to me, on one occasion in 1941 when I was remonstrating with her because she continued to stay in Chevy Chase.

122 She told me I had never been able to provide the proper kind of a home for her. She wasn't satisfied with her surroundings in Washington and she didn't see why in the world she hadn't married somebody else, and she couldn't understand why she kept living with me.

The Court: Did she say anything about leaving you?

The Witness: No, she did not.

The Court: Did you say anything about leaving her?

The Witness: No, sir.

The Court: Did you two ever make a voluntary agreement to separate?

The Witness: No, sir.

The Court: You say the last visit was in the spring of 1942, and you have never been back, and the reason you have never been back, you had reached an impasse. Now, what do you mean by that?

The Witness: I mean that I couldn't agree with the way monetary matters were being handled, because I saw that I stood to lose everything I had, that I had worked for, including my home up here.

* * * * *

125 The Court: When you left her there in 1941 because she wasn't well, you never supported her from that time, did you?

The Witness: I made arrangements with Mr. Johnson, who testified here this afternoon, to let Mrs. deBruin have anything out of his store that she required, and I would stand responsible for it, and today, if I owe Mr. Johnson a bill, as he thinks I do, I will be happy to pay it, sir.

In spite of the testimony to the contrary, I paid Mrs. Estelle Watts for the three weeks service for looking after Mrs. deBruin. I also went to Dr. Harris, the local physician, and, the last time I talked to him, he and I were excellent friends. I told him to wait on Mrs. de Bruin in whatever way she required, and to send me the bills. Dr. Harris had refused to attend Mrs. deBruin unless I authorized it. He refused the request of the family to do that.

The Court: Why?

The Witness: Perhaps for reasons of his own, sir. I do not know, other than he felt I should be the one who
126 assumed that responsibility, and I proceeded to do so.

* * * * *

128 The Court: When you were there weekends, did she want to come home, back to Washington?

The Witness: We used to talk about coming back here.

The Court: Did she say she wanted to come back?

The Witness: Yes.

The Court: And, in the spring of 1942, you stopped going down to see her?

The Witness: Yes.

* * * * *

131 The Court: When you were going down there every weekend up until 1942, she wanted to come back with you; didn't she?

The Witness: Yes. Mrs. deBruin subsequently wrote to me, asking that I send her all of our family silver, all of her clothes.

The Court: She did that after you refused to take
132 her back; didn't she?

The Witness: Now, your Honor, I have never refused to take Mrs. deBruin back into my house on the trips I made to Port Royal. I explained to her she was down there to rest up and improve her health.

The Court: She was sick; wasn't she?

The Witness: She was sick; yes, sir.

The Court: When do you allege that she deserted you?

The Witness: When she wrote to me asking that I have her personal belongings be sent to her in Virginia, that the family silver be sent to her, and so forth, and I considered that she was satisfied to live there without me.

The Court: Did you write and ask her if she was through?

The Witness: I did not.

The Court: Why didn't you?

The Witness: Well, I didn't feel it was incumbent upon me to do that.

The Court: Weren't you interested in finding out whether or not the marriage had ceased to exist?

The Witness: Sir?

The Court: Weren't you interested in finding out whether or not your marriage had ceased to exist?

The Witness: As far as I could see, it had, sir.

* * * * *

135 By Mr. Patterson:

Q. Mr. de Bruin, when Mrs. de Bruin was taken down to Port Royal in March 1941, how long did she stay at Port Royal before she went somewhere else? A. Do you mean, Mr. Patterson, before—

Q. Did she not go to Richmond from Port Royal soon after she got there? A. She was taken to Richmond, to Dr. Carrades, as I recall it.

Q. When was that? A. That was in the spring of 1941. I believe it was probably, maybe, the middle of April, or the first part of April. I can't be exact on the date.

* * * * *

Q. Did you know she was being put there? A. No, sir; I did not.

136 The Court: Mr. Patterson, I would like to make it clear. She went to Port Royal in March 1941; is that right?

The Witness: Yes, sir.

The Court: And Mr. Patterson asked you how long did she stay there before she went to Richmond. Do you know?

The Witness: Possibly three or four weeks.

By Mr. Patterson:

Q. And then she went to Richmond, and stayed with whom in Richmond? A. She was in Terra Springs.

Q. What is that? A. A sanatorium.

Q. Did you know she was being taken to Terra Springs?

A. I didn't, sir, until after she was there.

* * * * *

152 Q. After Mrs. de Bruin came back from Terra Springs to Port Royal, did she live in her mother's home or in whose home did she live at Port Royal? A. In her own home.

153 Q. In her own home? A. Yes, sir.

Q. How long did she remain in her own home? A. I cannot say precisely, because she was living there the last time that I saw her.

Q. There is some testimony here that that was early in 1943, and I believe you testified it was in June of 1942. What is your best recollection there? A. I believe it was 1942, sir.

Q. Certainly it was no later than Mr. Hicks said, early in 1943; is that correct? A. Yes, sir; that is correct.

Q. There could be some latitude in there?

What did you observe as to her condition up to that time, when you last saw her? A. Mr. Patterson, I didn't understand.

Q. What did you observe as to Mrs. de Bruin's condition after she came back and up to the last time you saw her?

Had she improved or not? A. I couldn't see that she had improved a great deal, no, sir.

Q. What have you to say as to her mental condition? Was she sane or insane?

Mrs. Cox: I object.

The Court: He may give his opinion.

The Witness: I wouldn't think she was insane, no, sir.

154 By Mr. Patterson:

Q. Nervous? A. She was still highly nervous.

Q. In your opinion, she was sick? A. Yes, sir.

Q. Now, assuming it was early in 1943, as Mr. Hicks said it was, when you last saw her, between that date and 1945, when you received this first letter, which his Honor inquired about, the letter in December 1945 asking that things be sent, did you receive some letters from her? A. Yes.

Q. How many? Do you know? A. Either two or three.

Q. Have you those letters? A. No, I don't have them now.

Q. What did you do with them? A. They are in the possession of an attorney in Fredericksburg.

Q. What is his name? A. Alvin T. Embry.

Q. Do you know about what years those letters were written? A. I can't be positive about the dates, Mr. Patterson, but I believe the first one came to me in the spring of 1944.

I can't be positive about that date.

155 Q. But it was in this interval between the last time of your seeing her.

What did she write about? A. She wrote to me for funds.

Mrs. Cox: If your Honor please, I still don't have the letters. Is it permissible to give us—

The Court: Why are these letters in the possession of an attorney?

Mr. Patterson: Beg pardon?

The Court: I am asking the witness why the letters are in the attorney's possession in Virginia.

Mr. Patterson: Yes; that is a good question.

By Mr. Patterson:

Q. Answer the Court. A. Because Mr. Embry had been advising Mrs. de Bruin and myself on legal matters for a number of years, and I felt that I should confer with him on the subject. I took these letters to him.

* * * * *

157 The Court: Now, have you sent any money to anybody since 1941 for the support and maintenance of your wife?

The Witness: No, sir; I have not.

* * * * *

158 Q. Has Mrs. de Bruin in any letter or conversation with you since you last saw her, suggested to you or indicated in any way that she ever expected to come home or wanted to come home? A. No, sir.

Q. On any of the numerous trips she has made, the visits to Washington which it has been testified she makes and has made, to your knowledge has she ever called at the house? A. No, sir.

Q. At her home? A. No, sir.

Q. Ever communicated with you while in Washington, during all these years? A. No, sir.

Q. Or from anywhere else? A. No, sir.

Q. Except to the extent of these letters?

159 When you left Mrs. de Bruin, took Mrs. de Bruin to Virginia, which has been so often testified to, was it your intention to abandon her to her family and never bring her back? A. It certainly was not.

Q. What was your intention? A. My intentions were to take her to Port Royal, as agreed between myself and her family, until her health and general condition improved to the extent that she could return to Washington.

Q. Did you tell her so? A. Yes, sir.

Q. Did you tell her so on the last occasion when you saw her? A. I certainly did, and on every occasion when she

raised the question of coming back here, I told her she could return to Washington when she was well.

Q. Did she apparently understand it? A. Yes, sir.

Q. And that was your intention until when? A. Until she indicated, by asking that her belongings be sent to her, and asking for separate maintenance.

The Court: She asked for separate maintenance?

The Witness: Yes, sir.

The Court: What do you mean by separate maintenance? When she asked you to send her some money to take care of her?

The Witness: She asked for separate maintenance, I would say, your Honor, through counsel prior to Mrs. Cox.

The Court: When was that?

The Witness: I believe that was in 1948.

Mr. Patterson: I have the letter here, which I will offer.

* * * * *

167 The Court: You say your wife is of sound mind, is that correct, in your opinion?

The Witness: I think she was at that time.

The Court: Is she still?

The Witness: She has been committed and is a parolee. I haven't seen her.

The Court: When was she committed?

The Witness: I believe in November of—

Mr. Patterson: We will have to put some proof on as to that.

Don't guess at it.

I will have to ask Mr. Hicks, when he takes the stand.

The Court: If he knows.

The Witness: To the best of my knowledge, it was in November of 1948.

By Mr. Patterson:

Q. Were you notified of any such proceedings? A. No, sir.

Q. Did any of the family notify you? A. No, sir.

Q. When did you first hear about it? A. When this complaint was filed.

168 The Court: Did you ever go down to see her in in this institution?

The Witness: No, sir; I did not.

The Court: Was she out before you knew it?

The Witness: Yes, sir. That is what I am coming to. When I first heard about it was when I found—I also found out she had been into this institution and out and was in Bowling Green acting as a companion to this Mrs. or Miss Webb.

The Court: Weren't you of the opinion she was mentally ill when you took her down to Port Royal?—to leave her down there?

The Witness: I would say that Mrs. de Bruin was extremely nervous and depressed. I didn't think that her condition was such that time and rest would not straighten it out. I had been told that by competent physicians,
169 Dr. Snowden, Dr. J. H. Bullock, Dr. Harris, of Port Royal, and Dr. Carrabedes, in Richmond.

Q. I show you a letter addressed to Milton H. de Bruin, dated June 11, 1949, signed C. Earl Johnson, Jr., M.D., Superintendent, and ask you if you received that letter.
A. Yes, sir; I did.

Q. Was that in response to the communication you sent to this institution? A. Yes, sir.

Mr. Patterson: Will you look at this, Mrs. Cox, and see if you object to its going into evidence?

Mrs. Cox: I have no objection.

Mr. Patterson: This letter is dated June 11, 1949. The suit was filed June 3, 1949. The testimony shows that Mrs. de Bruin was actually working at Bowling Green at the time when this letter was written.

170

"June 11, 1949."

This is on the stationery of the Commonwealth of Virginia, Mental Hygiene and Hospitals, Virginia State Sanatorium, Staunton, Va.

"Mr. Milton H. de Bruin,
Washington, D. C.

"Dear Mr. de Bruin:

"This will acknowledge receipt of your letter of June 8, 1949, having reference to Mrs. Lena de Bruin.

"You refer to Mrs. de Bruin as your wife, and I have no reason to doubt this statement, but it was my understanding that you were separated from her. Under these circumstances, I do not believe that I could legally release this information without authority from Mrs. de Bruin or her committee, if she has one. I might suggest that you get in contact with her about this matter, and if she will authorize us to release the information requested, I will be happy to do so.

"I am sorry to inconvenience you in this way, but I do not know of any other way of protecting the interests of the institution and myself.

"Yours very truly,

"C. E. Johnson, Jr."

—and, typed:

171

"C. Earl Johnson, Jr., M. D.,
"Superintendent."

I will ask that this be marked as defendant's exhibit Y.
(The document above referred to was thereupon marked as Defendant's Exhibit Y and was received in evidence.)

* * * * *

Q. It is stated in there that they understood it. Now, Mr. de Bruin, by what name did Mrs. de Bruin address you? Did she call you "Milton" or another— A. Nearly everyone calls me "Boots".

Q. Did she call you "Boots"? A. She did; yes, sir.

Q. I show you a letter with the salutation, "Boots", and signed "Lena," from Port Royal, Virginia, and an envelope bearing the postmark of Port Royal, December 12, A.M., 1945,—Port Royal, Virginia. I will ask you if you received this letter in the envelope attached to it. A. I did.

Q. Is that the signature of Mrs. de Bruin? A. Yes, sir; I would say it is.

Q. Was it received at the approximate time of this
172 postmark, as though it were in due course? A. Yes, sir.

Q. This is the first of the letters. I show you another letter, with the salutation "Boots", signed "Lena", and an envelope addressed on the typewriter to you at 323 Shepherd Street, Northwest, the postmark indicating it was mailed at Port Royal, Virginia, March 15, 1946; is that Mrs. de Bruin's signature? A. Yes, sir.

Q. Did you receive that in due course in the mail, in the envelope attached to it? A. Yes, sir.

Q. I show you a third letter, with the salutation "Boots", signed "Lena", dated Port Royal, Virginia, March 23, 1948, addressed by hand; whose handwriting is that? A. I would say that is Mrs. de Bruin's handwriting.

Q. The postmark is Port Royal, Virginia, but the date is smudged. Did you receive that letter in due course, at approximately the time it is dated? A. Yes, sir.

Q. Is that signed by Mrs. de Bruin? A. Yes, sir.

Mr. Patterson: Mrs. Cox, I am offering these three letters in evidence. They are the same letters that were exhibited.

173 Mrs. Cox: I have no objection.

Mr. Patterson: I will ask that these be introduced in evidence as defendant's exhibits, the envelope and the letter of March 15, the envelope and the letter of December 12, 1945, together, constituting one exhibit, defendant's exhibit A.

174 Defendant's exhibit A is a letter contained in the envelope—

Mrs. Cox: Dated?

Mr. Patterson: December 12, 1945. The envelope is dated Port Royal, Virginia, December 12, postmarked December 12, 1945, addressed to Mr. Milton de Bruin, 323 Sheppard Street, Northwest, Washington, D. C.

"Boots,

"You have in your possession some of my personal things, which I asked you for before—such as: my pearls, three rings (2 diamonds), enameled pin, silver lavalier, my flat silver, some of it given to me by Mrs. Lyons for service rendered her.

"Please let me have these.

"Lena

"Port Royal,

"Va."

Let us call those two defendant's exhibit A and let me have them back.

(Defendant's Exhibit A was received in evidence)

175 Mr. Patterson: Defendant's exhibit B, consisting of an envelope bearing the postmark of Port Royal, Virginia, March 15, P. M., 1946, addressed on the typewriter to Mr. M. H. de Bruin, 323 Shepherd Street, Northwest, Washington, D. C.

The letter contained in that envelope reads:

"Boots,

"Please let me have my personal things—my watch and other jewelry, the box of old coins, sheets, silver, and dresses, which I need."

Bearing the signature, "Lena".

Let that be marked defendant's exhibit B.

(The document above referred to was thereupon marked as Defendant's Exhibit B and was received in evidence.)

Mr. Patterson: Defendant's exhibit C, consisting of an envelope bearing postmark of Port Royal, Virginia. The date is so smudged that it is illegible.

The letter which came in that envelope contains the salutation "Boots".

"Mr. and Mrs. Gatchell Corbin want to buy the place. Price \$14,000 in addition use of the house for a definite period.

"Will you meet me in Bowling Green, Va., to sign the deed."

176 Signed, "Lena".

"Port Royal, Va.,

March 23, 1948."

Mark each of those defendant's exhibit C.

(The envelope and letter above referred to were thereupon marked, collectively, as Defendant's Exhibit C for identification.)

* * * * *

The Court: When you received this letter in December of 1945, did you then consider that you and your wife were separated?

The Witness: Now, just which letter are you referring to?

177 The Court: The first one, exhibit A, in which she said, "Boots, you have in your possession some of my personal belongings."

The Witness: I felt that Mrs. de Bruin was satisfied to live apart from me, or she would not have asked for those things.

The Court: Up until that time, you considered yourself all right, in so far as your marital status was concerned; did you not? And you put her down there to stay until she recovered?

The Witness: That is correct; yes, sir.

The Court: And the last time you saw her was in 1943, and you got this letter in 1945, December of 1945. Was that when you decided you and your wife had separated as man and wife?

The Witness: Yes.

* * * * *

180 By Mr. Patterson:

Q. Mr. de Bruin, have you lived with or has there been cohabitation between you and Mrs. de Bruin since 1941?

A. No, sir.

Q. Separated ever since? A. Yes, sir.

Q. Since the time you took her to Port Royal.

I show you a letter on the stationery of a lawyer, a law firm, in Richmond, dated July 17, 1948, addressed to you. Did you receive that letter? A. Yes, sir.

Mr. Patterson: I offer it in evidence as defendant's exhibit D, the envelope and the letter, which I now
181 read into the record:

"Law Offices
"May, Simpkins, Young, and Rudd
"Mutual Building
"Richmond 19, Virginia".

Then, there are the names of the various members of the firm, on the left-hand corner.

"July 17, 1948.

"Mr. Milton H. de Bruin,
323 Shepherd Street, Northwest,
Washington, D. C.

"Dear Sir:

"Mrs. de Bruin has consulted us about her present domestic difficulties involving you and has informed us that it is her desire to seek support from you without obtaining a divorce and to also secure her interest in the home in Washington at your present address in which she says she has a one-half interest. In addition to this, Mrs. de Bruin says she might be able to sell her home in Port Royal which is owned entirely by her, and she will desire to have you sign the deed releasing your courtesy right.

"It appears that you have not contributed to Mrs. de Bruin's support now since 1943, and really she has a claim in the nature of back alimony.

182 "Will you kindly advise us if you are willing to make any voluntary settlement or offer any definite amount in the form of monthly payments for support? In other words, we would like to know if there is a possibility of reaching an agreement without the necessity of resorting to litigation.

"A prompt reply will be appreciated.

"Very truly yours,

"May, Simpkins, Young and Rudd

"By Cutler May".

By Mr. Patterson:

Q. What did you do with this letter when you got it?

A. I believe that there was an answer to that.

Q. Did you turn it over to me? A. Yes, sir.

Q. I was your attorney at that time? A. Yes, sir.

The Court: What is the date of that letter?

Mr. Patterson: The date on this letter is July 17, 1948.

* * * * *

183 Mr. Patterson: That will be D, the envelope and the letter.

(The envelope and letter above referred to were thereupon marked as Defendant's Exhibit D, collectively, for identification.)

Mr. Patterson: Mrs. Cox, will you look at this letter?

Mrs. Cox: We will say as to "Leroy", that is intended for "Lena"; that is a typographical error; but that was my letter.

* * * * *

Mr. Patterson: I offer in evidence as defendant's exhibit E a letter on the stationery of Mrs. Elizabeth M. Cox, now attorney for Mrs. de Bruin, dated November 10, 1948.

(The letter above referred to was thereupon marked as Defendant's Exhibit E for identification, and was received in evidence.)

Mr. Patterson: It is dated November 10, 1948.
 "Thomas H. Patterson, Esquire,
 Woodward Building,
 Washington 5, D. C.

184 "Dear Sir:

"Mrs. Leroy de Bruin"—

She conceded that means Lena; that was a typographical error.

—"has consulted me concerning her domestic difficulties and employed me for the purpose of securing a property settlement with her husband.

"She tells me that you are her husband's attorney, and if that is true, I suggest that we have a conference to discuss the matter with a view to reaching an agreement.

"At the suggestion of my client, I have already conferred with Mr. Wilbur Gray, who formerly represented her.

"I will be glad to have you telephone me at your early convenience in order to arrange an appointment."

Mrs. Cox, will you stipulate that Mrs. de Bruin came to Washington personally and conferred with you?

Mrs. Cox: Yes.

Mr. Patterson: That she came to Washington more than once?

Mrs. Cox: Yes.

Mr. Patterson: More than once concerning this?

Mrs. Cox: Yes.

Mr. Patterson: Does she come to Washington
 185 very often?

Mrs. Cox: I don't know. I haven't seen her lately.

Mr. Patterson: She did consult with you personally on more than one occasion about this time?

Mrs. Cox: Yes.

• • • • •

Cross Examination

By Mrs. Cox:

* * * * *

187 Q. Now, when you took Mrs. de Bruin down to Port Royal and the few times you went to see her, isn't it true you told her if she came back you would send her to St. Elizabeths Hospital? A. I never told her that.

Q. Did you ever tell Mr. Wirt Hicks that? A. I never told Mr. Hicks I would do that. I told her, possibly, if she came back here in her condition, she would quite possibly have to be hospitalized.

Q. You didn't say St. Elizabeths Hospital? A. Beg pardon?

Q. You didn't say St. Elizabeths Hospital in that conversation? A. That is the only hospital in Washington. To the best of my knowledge, it is the best, one of the best, in this part of the country.

Q. Answer the question. Didn't you say it? A. I said it was probable.

The Court: Why did you say that?

The Witness: Because, your Honor, I was not in a position to properly take care of her in my home, provide nursing, and so forth. I discussed that question—

188 The Court: Was it your opinion then she was mentally sick?

The Witness: I couldn't say she was mentally sick; no, sir.

The Court: Why did you say she would have to go to St. Elizabeth, then, if she wasn't mentally sick? Why couldn't she go to any other hospital, if she was just ill but all right mentally?

The Witness: I couldn't predict exactly what would have to be done. I raised the question with Mr. Hicks. I also discussed it with Mrs. Lynch, and Mrs. Lynch, I believe, will bear with me that on one occasion she told me that she thought Mrs. de Bruin should go to St. Elizabeths, be put in St. Elizabeths, because she, having been a graduate from

Walter Reed Hospital here, had studied at St. Elizabeths, and said it undoubtedly was the best place in the country for the treatment of any sort of nervous or mental ailment.

I don't know—As I said before, I do not think that Mrs. de Bruin was completely mentally unbalanced. I say she was depressed, and she was extremely nervous.

The Court: You thought there was something wrong mentally with her, didn't you?

The Witness: I think it would be difficult for me to draw such a fine distinction, as to whether her state of depression was mental or not. I think it can be said that
189 if you become depressed and nervous it does have some effect on your actions.

The Court: Did you consider she was mentally ill when you took her to Port Royal, or didn't you?

The Witness: I would say that probably she was mentally ill. I couldn't positively establish that fact, sir.

The Court: Isn't that the reason you took her down to her family, so that they could take care of her while she was in this condition?

The Witness: She needed attention, yes.

The Court: And she insisted on coming back to Washington with you? She wanted to come back with you?

The Witness: Yes, she raised that question.

The Court: And you said if she came back you might have to put her in a hospital, in St. Elizabeths Hospital.

The Witness: I never told her that, no, sir.

The Court: Did you ever mention St. Elizabeths Hospital?

The Witness: I think the only time it was ever mentioned was after Mrs. Lynch and I had discussed the possibility of having her entered at St. Elizabeths for treatment.

The Court: And you told her she would have to stay down there in Port Royal until she recovered, didn't you?

The Witness: I told her she could come back to Washington and take her place in my home whenever her health improved so she could.

• • • • •

192 Q. In 1945, you said that you thought she was of sound mind, in 1945. Then why didn't you go down there and bring her home to Washington? A. Mrs. de Bruin, as far as I could see, was satisfied to live apart from me. I had not heard from her in any way, shape, form, or manner, or any member of her family.

Q. Didn't you promise her—You have already testified you promised her when she was well enough you
193 would bring her back to Washington. A. That is right.

Q. And in 1945, if you felt she was of sound mind, why didn't you bring her home? A. Mrs. Cox, there is a big question in my mind if Mrs. de Bruin ever has been of unsound mind, even though she was committed to this institution. I don't believe Mrs. de Bruin was examined by a psychiatrist at the time she was committed.

* * * * *

202 Redirect Examination

By Mr. Patterson:

Q. I don't believe it has been asked yet by either,
203 side: Were any children ever born to you and Mrs. de Bruin? A. No, sir.

Q. What is her age? What was her age when you separated? A. Mrs. de Bruin is either a year or eighteen months older than I.

Q. And how old are you? A. I will be 54 the nineteenth of this month.

* * * * *

213 **Wirt F. Hicks**, having been previously duly sworn as a witness, testified further as follows:

Direct Examination

By Mr. Patterson:

Q. When was the committee appointed in this case, Mr. Lynch? A. What date?

Q. Yes, sir. A. I don't recall. I haven't got it with me.
I don't recall.

214 Q. As near as you can come. A. 1948, I think it was.

* * * * *

215 Mrs. Cox: Your Honor, if it is important, the record is in this Court, in the Mental Health ancillary proceedings, the date of her commitment and the date of the appointment of the committee.

Mr. Patterson: I think, Mrs. Cox, the approximate dates are all I want. It was not earlier than November 1948?

Mrs. Cox: And not later than January 1949.

Mr. Patterson: That both occurred?

Mrs. Cox: Yes.

216 Mr. Patterson: Can we stipulate that, if your Honor please, for the purpose of this?

The Court: Very well.

By Mr. Patterson:

Q. Now, Mr. Hicks, who filed this petition, you or your brother? A. Brother.

Q. Do you know whether he, or did you or any other member of the family get in touch with Mr. de Bruin about it? A. No.

Q. Your answer is "no", that nobody told him? A. No, sir.

Q. Or communicated with him? A. No, sir.

Q. Did you communicate with him thereafter and tell him that his wife was in Staunton, in this institution? A. No, sir. I never saw him no more until I came here.

Q. Didn't tell him anything about it? A. I haven't seen him until I come here in Court.

Q. Where is Mrs. de Bruin today? A. Where is she?

Q. Yes. A. At her home.

Q. Did she come to Washington yesterday? A. I don't think so.

217 Q. Do you know? A. I don't know.

Q. You live in a little town? A. That is right.

Q. Two or three hundred people, almost next door to you? A. Yes, sir.

Q. You don't know whether she came to Washington or not? A. I left there yesterday morning at seven o'clock.

Q. Did you tell her this hearing was going to be had? A. I didn't tell her anything.

Q. Do you know whether anybody else did? A. I don't know.

Q. Do you know whether she has been to Washington this week? A. I don't know. She may be here right now. I don't know.

Q. When did you see her last? A. Oh, I see her nearly every night and morning when I am home. I come home every night and see her, or in the morning—she comes to meet me to get some money.

Q. You saw her yesterday morning? A. No, sir.

Q. See her the night before? A. I saw her the day
218 before, some time. She was out there in the street.

Q. You don't know whether she came to Washington yesterday, or the day before, or whether she is here now? A. No, sir. She may be here right now, for all I know. After I left home, my daughter told me she was there to see me yesterday.

Q. Has anybody ever told her of the pendency of this proceeding? A. I have told her that the suit was in process.

Q. When did you tell her that, last? A. She has been told from time to time.

Q. You know long ago it was coming up yesterday? A. I have known since last week some time it was coming up.

Q. You have discussed it with her several times since? A. Talked to her several times.

Q. Since that time? A. I talk to her any time; I talk to her every day;—

Q. You never told her this suit was coming up so soon; is that right? A. I told her it was coming up some time this month, sure.

Q. Did you ask her if she wanted to make one of her trips up to Washington? A. Did she want to make it?

219 Q. Did you ask her that? A. No, I never asked her did she want to make it.

Q. Do you know whether she has been in Washington in the last two weeks? A. Yes, she has been in Washington in the last two weeks—so she told me; I didn't see her over here. I saw her get on the bus, and I gave her money to go.

Q. To go to Washington? A. She just told me to give her money.

Q. To go to Washington? A. I don't know where she goes. She goes where she pleases.

Q. Did she tell you she come to Washington to talk about her case? A. No. She told me she was coming up to visit Mrs. Hamm, a lady she used to nurse.

Q. She frequently visits Mrs. Hamm in Washington? A. Yes, sir.

Q. No restraint on her coming or going? A. No.

Q. Hasn't been since your mother's death, except for the time in the sanatorium? A. There wasn't before mother's death.

Do you know how long Mrs. de Bruin was in this institution in Staunton? A. At Staunton?

220 Q. Yes. A. No, I don't know exactly. She was taken, I think—I am pretty sure she was taken there in the fall, to my recollection, just before Christmas.

Q. Yes. A. And she come out a little after—in January, some time like that. She was up there two or three months.

Q. Just a short time? A. Short time, yes.

Q. And then she went to work? A. That is right.

Mrs. Haskin
1-8-52

No. 10,977
BRIEF FOR APPELLEE

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

MILTON H. DEBRUIN, *Appellant*,

v.

LENA M. DEBRUIN, by her Ancillary Committee,
Wirt T. Hicks, *Appellee*.

Appeal from the United States District Court
for the District of Columbia

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No. 10,977

QUESTION PRESENTED

In the opinion of the appellee, the question is whether the judgment of the District Court should be affirmed for either of the two following reasons:

1. Because its finding of fact that the wife was a mental incompetent and did not have the capacity to desert the husband or to agree to any voluntary separation was supported by substantial evidence and should be accepted by this Court, or

2. Because the admissions of the husband on the witness stand (supplemented by undisputed testimony of other witnesses) demonstrate that there was neither a desertion by the wife nor a voluntary separation for five years.

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IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,977

MILTON H. DEBRUIN, *Appellant*,

v.

LENA M. DEBRUIN, by her Ancillary Committee,
Wirt T. Hicks, *Appellee*.

Appeal from the United States District Court
for the District of Columbia

BRIEF FOR APPELLEE

STATEMENT OF THE CASE

The parties to this appeal are husband and wife.

Complaint for maintenance was filed in the District Court on June 3, 1949, on behalf of the wife by C. R. Lynch, her ancillary committee, who was also her committee in Virginia. *Pendente lite*, Mr. Lynch died, and Wirt T. Hicks, the new committee and ancillary committee, was substituted in this cause.

The husband contested the claim for maintenance, and by counterclaim filed on June 23, 1949, sought a divorce, based on two alternate grounds, namely—

(1) That “in to wit, the year 1941, the plaintiff deserted the defendant in to wit, Port Royal, Caroline County, Virginia, which desertion has continued up to the present time”. (J. App. 7)

(2) “Or, alternatively, defendant says that plaintiff and defendant lived separate and apart, without cohabitation and by agreement, for more than five years prior to the filing of the complaint in this cause, and for more than five years before any adjudication of insanity on the plaintiff’s part, or the existence of actual insanity in the plaintiff, which separation continues”. (J. App. 7)

But at the trial, the husband changed his position very materially on both grounds.

As to the first ground, he admitted at the trial that his wife did not desert him in 1941, but on the contrary, he testified that he took his wife to Port Royal in 1941 and left her there against her will, because she was sick and needed attention that he could not give her at home; and that every time he visited her thereafter she begged him to bring her back home. In response to a direct question from the Court as to “when do you allege that she deserted you?” the husband replied that when she wrote him letters in December, 1945, and March, 1946, asking him to send her her watch and rings and certain other personal items he “considered she was satisfied to live without me”. (J. App. 42, 50). But he did not write and ask her if that was the case. (J. App. 42)

As to the second ground of divorce alleged in the counterclaim, the husband admitted at the trial that he and his wife had never made a voluntary agreement to separate (J. App. 40) or even discussed “the possibility of a separation” (J. App. 40). He testified that she always

asked to come back home with him until he stopped visiting her in 1942 or early in 1943 (J. App. 43); that he always told her that she could return home when she was well enough (J. App. 45, 46). He testified that it was always his intention to bring her back home (J. App. 45, 46) until he interpreted her letters above mentioned in 1945 and 1946, and her claim for maintenance in 1948 (J. App. 46) as indicating that she had changed her mind about wanting to come back (J. App. 46, 51).

After hearing six witnesses as to the wife's mental condition, the District Court found as a fact that "the plaintiff since 1941 has been a mental incompetent and did not have the capacity to desert or agree to any voluntary separation" (J. App. 10). He denied the divorce to the husband and granted maintenance to the wife.

The present appeal is based on the contention of the husband that the evidence does not support the finding of fact quoted above. Briefly stated, the evidence was as follows:

In January, 1941, the husband found that the wife "was acting peculiarly", and that he "could not persuade her from some of the ideas that were running through her mind" (J. App. 38). He "felt she was going to require nursing", so he called her brother (W. T. Hicks, of Port Royal, Virginia) and asked him to come down to Washington and have a talk concerning her condition (J. App. 38). He also discussed with Mrs. Mary Hicks Lynch, the wife's sister, who was a trained nurse, "the possibility of having her entered at St. Elizabeth's for treatment" (J. App. 56). He also called Dr. Edgar Snowden, a licensed and practicing physician of Washington, D. C., to come and see her. He told Dr. Snowden that his wife was "irrational" (J. App. 23, 39); and Dr. Snowden found on examining her at that time (January 26, 1941) and subsequently on February 22, 1941, that "she was nervous and seemed to be irrational" (J. App. 23); that

her "mental condition * * * was a psychosis women going through the change of life so often have"; and that she was "very, very depressed, would not talk" (J. App. 23)

The wife's sister, Mary Hicks Lynch, a graduate nurse, who had studied at St. Elizabeth's (an insane asylum) and had been employed at Emergency Hospital and Walter Reed Hospital (J. App. 24, 55, 56) came to see her about the same time and found that she "was in a mental state of confusion" and "had hallucinations and delusions, had ideas cops were on the outside trying to get her". (J. App. 25). On another occasion a little later, the same witness said that the wife "tore all the fur off" her coat, and "tore my sister-in-law's tablecloth she was in such a terrible state" (J. App. 25, 26). The same witness testified that a few weeks later "she was, I would say, in a catatonic state, sitting just like a statue, wouldn't eat, wouldn't do anything. In fact, she wouldn't talk". (J. App. 26). Still later, when the relatives were taking turns in caring for the wife, and it came the turn of this witness to have her in her home, she found that she was still "not rational" (J. App. 27), but "would walk around in my front yard, which was very humiliating, with garlands of leaves all in her hair, like some Greek goddess" (J. App. 27).

The wife's brother, Wirt T. Hicks, testified that during the time she lived with her mother (from the latter part of 1942 until November 15, 1945) she was "not normal" (J. App. 15); that "she would go out into the street and bow her head, kick her foot up in the air", or cause a commotion by going to the stores and telling everybody about what her husband had done to her (J. App. 15); and that she "never did get any better" (J. App. 15). He testified that after her mother's death in November, 1945, her conduct continued to be "not normal" and "very erratic" (J. App. 15); expressed the opinion that she was "irrational", (J. App. 17); and cited specific

actions and habits indicative of an irrational mind, such as playing like a child with bricks and pieces of dishes on a vacant lot, isolating herself in her room for long periods of time and refusing to come out even to eat her meals, refusing to take a bath, and going around "with no stockings, her legs all filthy dirty" (J. App. 15, 16, 17).

William Scott Johnson, a merchant in Port Royal, said that she would sometimes come into his store singing, sometimes tearing paper up and just throwing it around on the floor, sometimes just wandering around. (J. App. 32, 33). As an example of conduct which he deemed to be "not normal", he stated that on one occasion in 1946, he saw her walking around in a mud hole along the side of the road. The witness said "I slowed up, and I watched her, and she would walk around the mud hole, and then she would jump across it, and she would walk around it again. She was throwing her hands about, and she would jump across it again. I slowed up and then I turned around, looking back through the back glass after I passed her. She was still doing that same thing. * * * She didn't pay any attention to me at all". (J. App. 32, 33). She still does things that are not normal (J. App. 33).

The wife's mental condition "never did get any better" (J. App. 15). She is not rational yet (J. App. 27). She was committed to an institution for mental patients in November, 1948 (J. App. 46; Appellant's Brief, p. 8), and a committee was appointed to look after her affairs. During all this time prior to the wife's commitment in 1948, her brother, Wirt T. Hicks, took care of her financial affairs (J. App. 15).

The husband has not since 1941 contributed anything to the support and maintenance of his wife (J. App. 45), and the District Court so found (J. App. 10).

SUMMARY OF ARGUMENT

The finding of the District Court that the wife "since 1941 has been a mental incompetent and did not have the capacity to desert or agree to a voluntary separation" is amply supported by undisputed testimony, and is decisive of the case, because under the rule laid down by this Court in *Blandy v. Blandy*, 20 App. D. C. 535, 541, "the time during which the wife has been found to be insane can not be included in computing the statutory period of desertion" or the five-year period of voluntary separation.

But, even if this Court should hold that the District Court erred in finding as a fact that the wife did not have the mental capacity to desert her husband or to agree to a voluntary separation, it should still affirm the judgment of the District Court for the following reasons:

1. Because it is established conclusively by the testimony of the husband that the separation was not in its inception in 1941, either a "desertion" or a "voluntary separation" within the meaning of the statute.

2. Because this Court has held that where the separation is not voluntary in its inception, the burden is on the party claiming that the character of the separation subsequently changed to a "desertion" or a "voluntary separation", to prove that fact; and also to prove that the "desertion" or "voluntary separation" continued for the statutory period after it became such.

3. Because the husband has in this case so far failed to sustain that burden, that on the contrary his own testimony (which is uncontradicted on this point, and in fact fully corroborated) shows the converse to be true.

ARGUMENT

1. There is Substantial Evidence That Supports the District Court's Finding of Mental Incapacity; and None That Contradicts It.

Dr. Edgar Snowden, a practicing physician of Washington, who was called in by the husband to see the wife in January and February, 1941, found that the wife was "irrational" and was suffering from "a psychosis women going through the change of life so often have". Appellant argues that the doctor did not testify that the wife was "insane"; but the answer to that argument is that both of the terms he did use, namely, "irrational" and "psychosis" mean "insane", and are so defined by the Dictionaries, and by courts of law. See definition of "Insane" in Funk & Wagnall's New Standard Dictionary, and *State v. Leehman*, 49 N. W. 3, 5 (S. D. 1891); holding that "irrational" is a synonym of "insane". See also *Guardian Life Insurance Company v. Richardson*, 129 S. W. 2d 1107, 1116, 28 Tenn. App. 194 (1939), and *Handspike v. State*, 45 S. E. 2d 662, 665, 203 Ga. 11, holding that "psychosis" is a "serious mental derangement" and "a disease of the mind". *Dr. Snowden was not cross-examined by the husband's counsel; nor was any objection made to his testimony.* (J. App. 23, 24). In fact, the husband referred to him in his testimony as a competent physician (J. App. 47).

Mrs. Mary Hicks Lynch, a graduate nurse, who had studied at St. Elizabeth's Hospital for the insane, and with whom the husband in 1941 discussed the possibility of putting the wife in St. Elizabeth's for treatment (J. App. 55, 56), found the wife to be "irrational" in 1941, in a "catatonic" state (J. App. 26), with hallucinations and delusions (J. App. 25). This witness, who is a sister of the wife and has had ample opportunities to observe her throughout the period here involved, states that she

is not yet rational (J. App. 27). "Catatonia" is defined by Webster's International Dictionary (1936 Ed.) as a type of insanity "characterized by negativism and incoherence * * * with alternate periods of stupor and activity", and by Corpus Juris Secundum (which spells it "katatonia") as "a form of insanity distinguished by periods of acute mania and melancholy" (44 C. J. S. 36). Counsel for the husband did not object to any of this testimony or question the qualifications of the witness or her opportunities to observe the habits and conduct of the wife.

Other witnesses expressed opinions that the wife was "not normal" or was "not rational", and testified to numerous examples of irrational conduct extending throughout the period from 1941 to 1950 (J. App. 13, 14, 15, 16, 17, 18, 25, 26, 27, 28, 32, 33, 35). There is also undisputed testimony that her condition has not improved during this period.

There is no conflicting testimony as to the wife's mental condition unless the testimony of the husband may be deemed to be conflicting. He testified that in 1941 "probably she was mentally ill", but "I do not think Mrs. DeBruin was completely mentally unbalanced" (J. App. 56). However, he found that she was "acting peculiarly"; sent for Dr. Snowden; told the doctor that she was "irrational"; discussed with Mrs. Lynch the advisability of sending her to an insane asylum; and threatened to send her to an insane asylum if she returned home before she was well (J. App. 23, 38, 39, 55, 56). It will be noted that the husband, at first, denied making this threat, but on being pressed, admitted that he probably did (J. App. 55); and Wirt T. Hicks testified that the husband did make such threat (J. App. 14).

This Court held in *Hamilton v. United States*, 26 App. D. C. 382, 392, that as a general rule physicians and surgeons of practice and experience are experts upon the

question of sanity or insanity, and that it is not necessary that they should have made the particular disease involved in the inquiry a specialty, to render their testimony admissible as experts; and in the same case, this Court said that "whether a witness is shown to be qualified to testify to any matter of opinion is always a preliminary question for the judge at the trial, and his discretion thereon is conclusive, unless clearly erroneous as a matter of law".

And in *Taylor v. United States*, 7 App. D. C. 27, 37, this Court recognized the fact that a non-expert witness may testify on the subject of sanity and express an opinion thereon, provided he has had an opportunity to observe the appearance, manner, habits and conduct of the person involved. In the *Taylor* case, this Court quoted the following extract from an opinion of the Supreme Court of the United States:

"The truth is, the statement of a non-professional witness as to the sanity or insanity at a particular time, of an individual, whose appearance, manner, habits and conduct came under his personal observation is not the expression of mere opinion. * * * in a substantial sense, and for every purpose essential to a safe conclusion, the mental condition of an individual, as sane or insane, is a fact; and the expressed opinion of one who has had adequate opportunities to observe his conduct and appearance is but the statement of a fact". *Connecticut Mutual Life Insurance Company v. Lathrop*, 111 U. S. 612, 620, 4 Sup. Ct. 533, 28 L. Ed. 536.

In their brief, counsel for the husband rely upon certain activities of the wife (particularly after the death of her mother in November, 1945) as being incompatible with the District Court's finding that she was mentally incompetent. For instance, after the death of the mother, she appears to have been substantially unrestrained in her movements in the little village of Port Royal (which

is about half way between Washington and Richmond); to have issued small checks against her small bank account in the Port Royal Bank; to have signed at least two deeds (apparently, either jointly with other members of her family, or under their supervision); and for about eighteen months in 1948 and 1949 (while under the guardianship of a committee) was employed by a neighbor to act as a sort of sitter-companion to her paralytic mother. The explanation of these activities is in the record. Her insanity appears to have been of a non-dangerous type; the husband had contributed nothing to her support since 1941; the family could not afford to maintain her in an institution; and a kindly-disposed neighbor gave her the simple employment as companion to her mother to help keep her mind off her troubles and to enable her to earn some much needed money. (J. App. 27).

Not all insane persons are insane all of the time. As this Court said in *Critchfield v. Easterday*, 26 App. D. C. 89, 95, "even insane persons may have lucid intervals, and his contracts then made are valid and binding". Hardly any person is so completely insane that he does not perform some acts that are consistent with sanity. It is the proper function of the trial court to consider all of the evidence; and it is to be presumed that he did so in this case.

Rule 52, Federal Rules of Civil Procedure, provides in part as follows:

"Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses".

In an opinion rendered by this Court on April 12, 1943, Justice Miller said:

"The verdict of a jury, like the findings of a judge who tries a case without a jury, constitutes a final determination of disputed facts, where the evidence

is of such a character that intelligent persons may honestly differ as to what was actually proved." *Friedman v. Decatur Corporation*, 77 U. S. App. D. C. 326, 330, 135 F. 2d. 812.

2. Even if the District Court Was in Error in Finding That the Wife Was Mentally Incompetent Prior to November, 1948, His Judgment Should be Affirmed on Other Grounds.

The record is clear and uncontradicted (in fact the testimony of the husband standing alone would support the statement) that the separation when it was initiated in 1941 was not voluntary on the part of either the husband or the wife, in a legal sense, because it was occasioned by the wife's illness, and both parties intended to reunite as soon as the wife was well enough to return home. The wife was violently opposed to the separation; and was so upset that she had to be held by relatives while the husband slipped away from her. (J. App. 13, 14).

Thus, clearly, it was not in fact a "voluntary" separation on the part of the wife in any sense; and we respectfully submit that in contemplation of the statute it was not a voluntary separation on the part of either, because a separation due to the illness of one of the spouses with the intention on the part of both to reunite as soon as the ailing spouse is able to return home is not a "voluntary separation" within the contemplation of the divorce statute.

Since, therefore, the separation was not voluntary in its inception, the burden was on the husband to prove, either (1) that at some subsequent time the wife deserted him for a period of two years, or (2) that both husband and wife subsequently agreed to separate and voluntarily remained apart for five consecutive years. *Bowers v. Bowers*, 79 U. S. App. D. C. 146, 143 F. 2d

158; *Butler v. Butler*, 81 U. S. App. D. C. 26, 154 F. 2d 203.

We will undertake to demonstrate in the next two sections of this brief, that the husband has not only failed to sustain such burden of proof, but that on the contrary the District Court would have been required to deny the divorce on the testimony of the husband alone.

3. The Undisputed Testimony of the Husband Shows That the Wife Did Not Desert Him, Either in the Year 1941 or at All.

The first of the two alternative grounds for divorce alleged in the counterclaim is that the wife deserted the husband in the year 1941, "which desertion has continued up to the present time".

But the undisputed testimony of the husband establishes the fact that in 1941 he delivered the wife to her relatives to be taken care of until she was well enough to return home; that the wife protested against the separation; that at that time and repeatedly thereafter he promised her that he would bring her home as soon as she was well enough; that he threatened to put her in an insane asylum if she returned home before she was well; *and that he never at any time thereafter requested her to return to him.*

These facts completely negative any desertion on her part.

The following language from a case where the separation was mutually voluntary in its inception is equally applicable in principle to this case:

"To convert her continuation of their voluntary separation into the statutory desertion, it was at the very least, incumbent upon him to show that he had, in a conciliatory manner and in perfect good faith, invited her to return without condition. This proof

has not been made." *Woolard v. Woolard*, 18 App. D. C. 326, 330.

4. It Can Be Demonstrated by Arithmetic That There Could Not Possibly Have Been a Voluntary Separation for Five Years Prior to the Adjudication of the Wife's Insanity in November, 1948.

The husband testified that he and his wife never made a voluntary agreement to separate (J. App. 40), and never even discussed a separation or the possibility of separation (J. App. 40); that he continued to visit her in Port Royal during her illness until 1942 or early in 1943 (J. App. 43); that each time he came to see her she asked him to take her back home with him (J. App. 41); that he always promised her that he would take her back when she was well enough (J. App. 45, 46); and that it was his intention to bring her back until he concluded in December, 1945, (J. App. 51), that she had deserted him (J. App. 42). That conclusion was reached when he got the letter from his wife in December, 1945, asking him to let her have her rings and certain other jewelry (J. App. 50); and that was when he decided that he and his wife "had separated as man and wife".

While we do not concede that the husband was correct in interpreting the wife's brief request for her rings and other jewelry as either a desertion or as any evidence whatever of a desire to separate from him as man and wife, it is clear from the husband's own testimony that he expected to bring the wife home as soon as she was well enough to come, *and that that expectation continued until at least December, 1945*. There is also no evidence that prior to the same date (December, 1945) the wife did not continue in the same expectation. Thus, the separation did not become voluntary in the legal sense on the part of either until December, 1945, if it ever became so. But a simple calculation will show that from December, 1945, to November, 1948, the date the

wife was adjudged insane, is much less than the five-year period required by statute.

If (as we respectfully submit is the case) there is no substantial basis for the husband's conclusion that the wife's request for her watch and rings and some money to live on is evidence that she had deserted him or did not intend to return to him, then there is no evidence in the record that she ever voluntarily separated from him.

In concluding the argument on this point, we take the liberty of quoting somewhat fully from the opinion of this Court in *Martin v. Martin*, which serves the double purpose of showing that the separation must be *voluntary on both sides for the full period of five consecutive years*, and of demonstrating that the only decision of this Court cited and relied upon by Appellant in his Brief (*Parks v. Parks*, 73 App. D. C. 93, 116 F. 2d 556), is *not applicable to the facts of this case*:

"Since there was no dispute as to the fact that the parties had lived separate and apart, without cohabitation, for more than five consecutive years before the suit was filed, the only question is whether the separation was 'voluntary' within the meaning of the statute,

"At its inception, the separation was not by mutual consent, as the husband ordered the wife to leave their home, and she protestingly complied. This Court has held, however, that the issue is whether the separation was voluntary or involuntary throughout its duration. Its nature at the beginning is not determinative; for even if one party did not agree to the separation at its outset, he might thereafter affirmatively consent or silently acquiesce for the required period. We have also held that '... if either party does not voluntarily and continuously acquiesce in separation during five years, the statute does not authorize divorce even though the separation was originally voluntary on both sides.'

"We agree with the Court of Appeals of Maryland which, in dealing with a similar statute said,

'where a relationship exists between two persons by reason of their common consent, it can only be voluntarily terminated by both, when both are willing and intend that it be terminated. If one of his own free will and accord ends the relationship against the will and wish of the other, the termination is voluntary as to the one, involuntary as to the other.' As that court added, the very word 'voluntary' connotes an agreement, and unless the parties agree to live apart the separation cannot be voluntary.

"Because the District Court found that 'the parties for all practical purposes have been unmarried since 1939', the appellant relies heavily upon the Parks, Boyce, and Buford cases, where we said that the liberal amendment of 1935, which is the Code section now under consideration, was intended to permit the legal ending of marriages which have ceased to exist in fact. Consequently, the appellant reasons that the court, having found that for all practical purposes his marriage ended in 1939, should have granted a divorce. *The argument is invalid for the reason that the statement quoted from the cited cases must not be extended so as to destroy the effect of the word "voluntary" which is present in the statute. The District Court may put a legal end to marriages which no longer exist in fact only in those cases where the separation has been continuously voluntary on the part of both husband and wife for the statutory period.*" (Emphasis supplied). *Martin v. Martin*, 82 U. S. App. D. C. 40, 160 F. 2d 20.

CONCLUSION

The judgment of the District Court was in all respects correct, and should be affirmed.

Respectfully submitted,

ELIZABETH M. COX,
Attorney for Appellee.

REPLY BRIEF FOR APPELLANT

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United States Court of Appeals

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No. 10,977

MILTON H. DEBRUIN, *Appellant*,

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REPLY BRIEF FOR APPELLANT.

Following the formula adopted in appellant's brief heretofore filed herein, the appellant will be called the "husband" and the appellee the "wife".

1. Five Years Voluntary Separation of the Parties.

On page 13 of the appellee's brief, her counsel undertakes to demonstrate by arithmetic that there could not have

been a voluntary separation of husband and wife for a period of five years prior to November, 1948, notwithstanding the fact that neither the husband nor the wife visited or saw each other after early in the year 1943. The result of this arithmetical computation is correct, but it is respectfully suggested to the court that the wrong date was used by the appellee as the starting point of this separation. Instead of using December 12, 1945, as the earliest date from which there could have been a voluntary separation, the wife's counsel should have used early in the year 1943, as the true date (J. App. 43-44). The wife's actions in writing to her husband for her belongings on December 12, 1945, and on March 15, 1946, did not necessarily indicate that the wife's intention to live apart from her husband was first entertained on December 12, 1945; but, instead, to continue an already existing separation. In adopting December 12, 1945, as the first possible date for a voluntary separation to have begun, apparently counsel for the wife misinterpreted the true effect of several former decisions of this court, hereinafter cited, construing the statute making five consecutive years voluntary separation from bed and board without cohabitation a ground for divorce. In the light of these decisions, it is submitted that a fair statement of the law as embodied in this statute is this: the nature of the separation of the spouses at its beginning is not determinative of the right of either of them to have a divorce after the expiration of five years. The separation may have begun with the desertion of one or the other; the other may have wished for or requested a resumption of the marital status. What is required is that there be a period of five consecutive years of actual separation during which five year period they both acquiesce in such separation. Failure of either of the spouses to attempt to terminate a separation for a period of five years constitutes acquiescence and makes the separation voluntary in the statutory sense. *Parks v. Parks*, 73 App. D. C. 93, 116 F.2d 556; *Bowers v.*

Bowers, 79 U. S. App. D. C. 146, 143 F.2d. 158; *Buford v. Buford*, 81 U. S. App. D. C. 169, 156 F.2d. 567; *Martin v. Martin*, 82 U. S. App. D. C. 40, 160 F.2d. 20.

Assuming the mental capacity of the wife to comprehend what her marital rights and obligations were during the more than five years period of separation, between the time when the spouses last saw each other and November, 1948, then it was error for the court below to deny the husband a divorce on the ground of five years voluntary separation. As was said in *Buford v. Buford*, *supra*, referring to *Parks v. Parks*, *supra*, "The purpose of the five-year law is not to punish vice or reward virtue, but 'to permit termination in law of certain marriages which have ceased to exist in fact' ". It will thus be seen that no express agreement of the parties to live apart for five years is required in order to make a five years separation voluntary under the statute now being considered. The voluntary character of the separation connoting agreement of the parties therein may be implied from the facts and circumstances. Such implication may result from acquiescence of the parties in the separation for a period of five consecutive years.

The court's indulgence is prayed for the inclusion here of a quotation from this court's opinion in the case of *Parks v. Parks*, *supra*, because of its applicability to the instant case:

"Six consecutive years of separation had elapsed. The separation was not at first voluntary on the defendant's part; when the plaintiff deserted her, she begged him not to go. But from that time on she neither asked him to return nor made any other attempt to bring about a reconciliation. It is perhaps a fair inference that she reconciled herself to separation. But that, we think, is not the question. Even if she did, in fact, wish her husband to return, in the course of time her silent acquiescence in the separation made it voluntary in the statutory sense. Desires which are not reflected in conduct have little or no social or legal

significance. The law is full of instances in which the will that counts is the apparent rather than the secret will. The liberal purpose of the 1935 amendment points to this construction. * * *

In the later case of *Buford v. Buford*, *supra*, this court said that when a separation has continued for more than five years and neither party has tried to end it, a divorce should be granted. In the instant case the separation of Mr. and Mrs. deBruin had continued for more than five years prior to Mrs. deBruin's adjudication of mental incompetency, without either of them having tried to end this separation.

2. The Husband's Claim of Desertion On the Part of the Wife.

On page 12 of the wife's brief, it is stated that the undisputed testimony of the husband shows that she did not desert him. Her construction of so much of the husband's testimony as she claims established this fact is set forth (Appellee's brief p. 12). Among other things, she says, in effect, that when the husband took his wife to Virginia in 1941, and repeatedly thereafter, he promised her that he would bring her home as soon as she was well enough to come back. In this connection, the record shows that the husband never saw his wife after 1942, or, at the latest, after the early part of 1943. Any such promises, therefore, must have been made not later than early 1943 (J. App. 43). Whatever thoughts or intentions the husband may have entertained as to whether or when the wife would return to her home in Washington (J. App. 45-46) have no bearing upon the question of whether the wife determined to remain in Virginia, separate and apart from her husband.

The Appellee stresses the fact that the testimony of the husband shows that he never requested his wife to return to him; citing *Woolard v. Woolard*, 18 App. D. C. 326, as

an authority on the point that such a request was necessary before Mrs. deBruin could be held to have deserted him. In the instant case, however, it was unnecessary for the husband to invite his wife to return to her own home. This home was owned by husband and wife jointly as tenants by the entireties (J. App. 3), and was continuously available for her occupancy whenever she wished to return to it. Notwithstanding the numerous visits which the wife has made to Washington since the death of her mother in November, 1945 (J. App. 43, 48, 58-60), the record does not indicate that on a single occasion she has taken the trouble to go to her own home or to communicate with her husband, while in the same city with him. On the contrary, the evidence shows that on more than one occasion, she came to Washington to consult with counsel about her domestic difficulties and that she engaged her present counsel "for the purpose of securing a property settlement with her husband". This employment was prior to November 10, 1948; before that time, she was represented by another Washington attorney (J. App. 54). A law firm in Richmond, Virginia, had been consulted by her prior to or on July 17, 1948, on substantially the same subject matter (J. App. 52-53). From the time the wife started her frequent visits to Washington, a period of about three years prior to any adjudication of her mental condition, all she had to do was to go to her own home and walk in, which she did not do.

3. The Wife's Mental Capacity.

Certain understatements appearing on pages 9 and 10 of the wife's brief should be the subject to a reply. For instance, the statement is made that after the death of the wife's mother the wife appears "to have been substantially unrestrained in her movements in the little village of Port Royal * * *". In the light of the testimony of Wirt T. Hicks, the wife's committee, and of her sister, Mary Hicks

Lynch (J. App. 18, 30, 31, 58-60), we must conclude that this freedom from restraint appears to have been unlimited and extended far beyond the "little village of Port Royal" and included Bowling Green, Richmond, Fredericksburg, and Washington, D. C. The testimony of Wirt T. Hicks, committee, shows that the wife signed at least three deeds instead of "at least two" as stated in the wife's brief. One of these was in 1942, another apparently in 1943, and the last after the wife's mother's death in 1945 (J. App. 18-20). The wife's brief, page 10, admits she "issued small checks against her small bank account in the Port Royal Bank"; this statement should have been enlarged to say that after the Port Royal Bank closed, she continued to bank in Bowling Green (J. App. 51-52); that beginning with the death of the wife's mother and continuing until the wife went to the sanitarium, a period of about three years she traded at a local store and paid her bills by checks, using a Bowling Green bank for that purpose (J. App. 93-94).

In view of the recognized rule that the test of mental capacity for entering into a valid marriage is whether the party so marrying is capable at the time of understanding the nature of the marriage contract and the duties and responsibilities which it creates, it would seem that the same test would apply where the question involved is the mental capacity of one or the other of the spouses to terminate, in fact, the marriage relation, by desertion or voluntary separation for five consecutive years. If, for instance, the wife in the present case had been an unmarried woman early in 1943, and that between that date and November, 1948, she had entered into a marriage with her present husband, it is very earnestly suggested to the court on behalf of the husband that a suit to invalidate such a marriage on the ground of the wife's mental incapacity to contract the same would have failed, if every symptom of mental incapacity actually testified to in this case had been proved in such suit for annulment. *Roether v. Roether*

(Wis. 1923), 191 N. W. 576, 28 A. L. R. 631 (annotation to this case 28 A. L. R. 641 with numerous cases cited).

Conclusion.

It is again urged by the appellant that the judgment of the District Court should be reversed.

Respectfully submitted,

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